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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER,

Plaintiff

v.

PAUL EVANKO, MARK  
CAMPBELL, THOMAS  
COURY, JOSEPH  
WESTCOTT, HAWTHORNE  
CONLEY

:  
:  
: No. 1:CV-01-0084  
: (Judge Caldwell)  
:  
: CIVIL ACTION – LAW  
:  
: JURY TRIAL DEMANDED  
:  
:

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**EXHIBITS TO DEFENDANTS' BRIEF IN SUPPORT  
OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
VOLUME 5**

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FILED  
HARRISBURG, PA  
MAY 21 2002  
MARY E. [signature]  
P&F [signature] Deputy Clerk

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT  
OF PENNSYLVANIA

\* \* \* \* \*

DARRELL G. OBER, \*

Plaintiff \* Civil Action-Law

vs. \* Case No.

PAUL EVANKO, MARK \* 1:CV-01-0084

CAMPBELL, THOMAS \* .

COURY, JOSEPH \*

WESTCOTT and \*

HAWTHORNE CONLEY, \*

Defendants \*

\* \* \* \* \*

VIDEOTAPED DEPOSITION OF  
DARRELL G. OBER  
DECEMBER 5, 2001

*ORIGINAL*

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VIDEOTAPED DEPOSITION

OF

DARRELL G. OBER, taken on behalf of  
the Defendants herein, pursuant to  
the Rules of Civil Procedure, taken  
before me, the undersigned,  
Bernadette M. Black, a Court Reporter  
and Notary Public in and for the  
Commonwealth of Pennsylvania, at the  
Office of General Counsel, 333 Market  
Street, 17th Floor, Harrisburg,  
Pennsylvania, on Wednesday, December  
5, 2001, at 9:00 a.m.

A P P E A R A N C E S

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1 A P P E A R A N C E S (Cont'd.)

2

3 ALSO PRESENT:

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5 Director of Internal Affairs for the

6 Pennsylvania State Police

7 Bureau of Professional Responsibility

8 7820 Allentown Boulevard

9 Harrisburg, PA

10

11 ALSO PRESENT:

12 CRYSTAL M. LYDE

13 PR Video

14

15

16

17

18

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P R O C E E D I N G S

-----  
DARRELL G. OBER, HAVING FIRST BEEN  
DULY SWORN, TESTIFIED AS FOLLOWS:  
-----

VIDEOGRAPHER:

My name is Phillip Way.  
I'm employed by Sargent's  
Court Reporting Service. The  
date today is December 5th,  
2001. The time is 8:59 a.m.  
This deposition is being taken  
at 333 Market Street,  
Harrisburg, Pennsylvania. The  
caption of this case is in the  
United States District Court  
for the Middle District of  
Pennsylvania, Darrell G. Ober,  
Plaintiff, versus Paul Evanko,  
Mark Campbell, Thomas Coury,  
Joseph Westcott, Hawthorne  
Conley, Defendants. Case  
Number 1:CV-01-0084.

The name of the witness  
is Darrell G. Ober. This

1 deposition is being taken on  
2 behalf of the Defendants.  
3 Will the attorneys present  
4 state their names and the  
5 parties they represent?

6 ATTORNEY BAILEY:

7 My name is Don Bailey.  
8 I represent the Plaintiff,  
9 Darrell G. Ober, in this  
10 matter.

11 ATTORNEY GUIDO:

12 Syndi Guido, I  
13 represent the Defendants.

14 ATTORNEY REYNOLDS:

15 Joanna Reynolds, I  
16 represent the Defendants.

17 VIDEOGRAPHER:

18 The Court Reporter has  
19 already sworn in the witness.

20 MS. LYDE:

21 My name is Crystal M.  
22 Lyde, L-Y-D-E. I'm contracted  
23 out by PR Video. My address  
24 is 4310 Hillsdale Road,  
25 Harrisburg, Pennsylvania.

1 Thank you.

2 ATTORNEY GUIDO:

3 And at the outset, I  
4 just wanted to clarify if  
5 we're going to have the same  
6 stipulations we had before  
7 about, you know, objections  
8 being reserved, except for  
9 form of the question?

10 ATTORNEY BAILEY:

11 Yes. We can agree to  
12 just --- yes. Sure, that's  
13 fine. A couple of just  
14 housekeeping chores. One, we  
15 will be responding soon with a  
16 Modification to the Production  
17 of Documents.

18 ATTORNEY GUIDO:

19 Okay.

20 ATTORNEY BAILEY:

21 And we respectfully  
22 take issue, of course, and  
23 we'll get that worked out with  
24 some of the responses that you  
25 made in that document request

12

1 and some of the restrictions  
2 which are onerous, so we do  
3 object to those.

4 ATTORNEY GUIDO:

5 Okay.

6 ATTORNEY BAILEY:

7 Do you have any idea  
8 how long you're going to be  
9 today? Do you have ---?

10 ATTORNEY GUIDO:

11 Probably most of the  
12 day.

13 ATTORNEY BAILEY:

14 Okay.

15 EXAMINATION

16 BY ATTORNEY GUIDO:

17 Q. Okay. At the beginning,  
18 Mr. Ober, you've already been sworn.  
19 If I ask you any question that you  
20 don't understand, please ask me to  
21 rephrase it and I'll do that. If you  
22 answer the question, then I'll assume  
23 that you have understood my question.  
24 Okay? Are you under the influence of  
25 any kind of drugs or alcohol today?

1 A. No.

2 Q. I want to start just by going  
3 over your background. Here's just  
4 copies for you. I'm going to show  
5 you Exhibit One. Do you recognize  
6 that as your own resume?

7 (Deposition Exhibit  
8 Number One marked for  
9 identification.)

10 A. Yes, with noting that it's not  
11 up to date. But, yes, I believe it's  
12 generally my work history.

13 BY ATTORNEY GUIDO:

14 Q. Year 1999. I'll show you a  
15 2000 resume. That's Exhibit Two.  
16 The '99 would be Exhibit One.  
17 Exhibit Two is your 2000 resume; is  
18 that right?

19 (Deposition Exhibit  
20 Number Two marked for  
21 identification.)

22 A. Correct.

23 BY ATTORNEY GUIDO:

24 Q. Let's just briefly go over  
25 your education. Can you tell us

1 about that?

2 A. After high school, I enrolled  
3 in the Pennsylvania State University,  
4 where I majored in the administration  
5 of criminal justice. I graduated cum  
6 laude in 1979.

7 Q. Okay. What was your degree?  
8 You said your degree was in criminal  
9 justice?

10 A. Yes, Bachelor's of Science. I  
11 enrolled in graduate school at the  
12 Indiana University of Pennsylvania.  
13 However, upon appointment to the  
14 state police, I withdrew from  
15 graduate studies.

16 Q. What were you going to study  
17 at Indiana?

18 A. Public administration.

19 Q. And what did you do right  
20 after college?

21 A. Right after college, I, ---  
22 well, actually at the end of my  
23 senior year, I had made a number of  
24 applications in state government in  
25 law enforcement-related functions,

1 took a number of tests. And for the  
2 summer, I mostly just --- summer of  
3 '79, I mostly just worked for my  
4 father until being appointed or  
5 selected to work at Indiana  
6 University of Pennsylvania as a  
7 campus police officer. Shortly after  
8 appointment, I attended the  
9 Pennsylvania Law Enforcement Academy  
10 in Scotland, Pennsylvania, where I  
11 graduated number one in my class.

12 Q. And what is the Pennsylvania  
13 Law Enforcement Academy?

14 A. Well, I don't believe it's any  
15 longer in existence. But at one time  
16 it was the training facility for  
17 campus police officers and there were  
18 some municipal officers, although, I  
19 don't know exactly how many.

20 Q. Now, was that put on by the  
21 Department of Education?

22 A. Yes, ma'am.

23 Q. Now, when did you first enlist  
24 with the state police?

25 A. I enlisted in the state police

1 on July 20th, 1981.

2 Q. Okay. When did you first  
3 apply to the State Police Academy, if  
4 you recall?

5 A. I can guess at that one. I  
6 believe my first application would  
7 have been in the spring of 1979.

8 Q. Do you know how many times you  
9 applied before you were accepted to  
10 the academy?

11 A. I applied once, tested twice.

12 Q. And so you started as a  
13 trooper then on July 20th, 1981?

14 A. I started as a cadet.

15 Q. As a cadet. Okay. And when  
16 did you become a trooper?

17 A. December 5th, 1981.

18 Q. What were your assignments as  
19 a trooper?

20 A. My initial assignment on  
21 graduation was to a patrol unit and  
22 Troop S. Milesburg was the  
23 headquarters. I was assigned to the  
24 Mercer Station.

25 Q. When were you promoted to

1 corporal?

2 A. I was promoted to corporal on  
3 February 18th, 1987.

4 Q. While you were a trooper and  
5 before you were a corporal, were all  
6 of your assignments basically patrol?

7 A. No.

8 Q. Okay. Can you outline that,  
9 your history for me?

10 A. I was primarily a patrol  
11 trooper while assigned to Troop S. I  
12 transferred to Troop E, Butler, also  
13 at the Mercer Station for two years  
14 or so. And there I was primarily  
15 assigned to a patrol unit, but we did  
16 criminal investigations, as well. I  
17 then transferred to Troop G,  
18 Hollidaysburg. I was assigned to the  
19 McConnellsburg Station, again in a  
20 patrol unit, but I did do a rotating  
21 assignment through the criminal  
22 investigation unit while I was  
23 assigned there.

24 Q. Okay. Once you became a  
25 corporal, can you outline your

1 assignments as a Corporal for me?

2 A. Yes. I accepted a position,  
3 promotion to corporal to Troop T,  
4 Bowmansville, in 1987. I was  
5 assigned to a patrol unit in Troop T,  
6 Bowmansville, for about ten months.  
7 And then as I had done in the other  
8 instances, I requested a preference  
9 transfer back to Troop G and was  
10 again assigned to McConnellsburg.  
11 And there I was a patrol supervisor.

12 Q. How many times were you at ---  
13 I guess I'm asking, at that point in  
14 time how often were you at Troop G?

15 A. Twice.

16 Q. And about how many years was  
17 that?

18 A. About four years total, I  
19 suppose.

20 Q. And when were you promoted to  
21 sergeant?

22 A. I was promoted to sergeant in  
23 March of 1993. No, no. That's not  
24 correct. 1991.

25 Q. And your assignments as

1 sergeant?

2 A. My assignments as sergeant, I  
3 was assigned originally to the  
4 systems and procedures section and  
5 the Bureau of Research and  
6 Development.

7 Q. What do they do?

8 A. We missed a transfer. I don't  
9 know if you need to know that or not.

10 Q. Okay. Go ahead.

11 A. As a corporal, I transferred,  
12 again, I requested a preference  
13 transfer to the Department of  
14 Headquarters in 1989. And I applied  
15 for a specialized position in the  
16 Bureau of Research and Development.  
17 And I was there for, I guess, two  
18 years or so, as a staff writer in the  
19 bureau. And then I was promoted to  
20 sergeant in the same section.

21 And to answer your question on  
22 what do they do, the Bureau of  
23 Research and Development, Systems and  
24 Procedures Section, is tasked with  
25 writing the directives that drive the

1 department, research and directives.

2 It's an assignment exclusively  
3 related to managing the directive  
4 system that runs the state police.

5 Q. You became a lieutenant when?

6 A. I was promoted to lieutenant,  
7 I believe that was also in March of  
8 1993.

9 Q. Your assignments as a  
10 sergeant, did you spend all that time  
11 in research and development or were  
12 you elsewhere, as well?

13 A. No. I was only in research  
14 and development.

15 Q. And then when you were  
16 promoted to lieutenant, what did you  
17 do?

18 A. I accepted a position with the  
19 newly-created systems and process  
20 review division in the Bureau of  
21 Professional Responsibility.

22 Q. What did that division do?

23 A. That division was the former  
24 staff inspection division. And the  
25 mandate for the three lieutenants who

1 were promoted, myself and two others,  
2 were to create a system, a permanent  
3 ongoing inspection system that had  
4 continuity and could comply with the  
5 mandates of the accreditation  
6 program. So we were tasked with  
7 performing staff inspection functions  
8 throughout the department.

9 Q. And the staff inspections,  
10 those are to make sure that the state  
11 police members are complying with all  
12 the rules and regulations of the  
13 department?

14 A. Essentially.

15 Q. Okay. And then you became a  
16 captain when?

17 A. I was promoted to captain on  
18 March 3rd, 1995.

19 Q. And your first assignment as a  
20 captain?

21 A. I was promoted to the position  
22 of division director in the systems  
23 and process review division.

24 Q. As division director, what  
25 were your duties?

1 A. My duties were, as a division  
2 director, to manage the inspection  
3 component of the entire state for the  
4 Bureau of Professional  
5 Responsibility. I supervised three  
6 sections, who were commanded by  
7 lieutenants.

8 Q. What were the sections?

9 A. Where?

10 Q. What?

11 A. Well, we have the state  
12 divided geographically, east, west  
13 and central. And those sections are,  
14 as was my former position as a  
15 central section commander, those  
16 sections are under the supervision of  
17 a lieutenant.

18 Q. And then what other  
19 assignments have you had as a  
20 captain?

21 A. In 1998, I was asked by Major  
22 Merryman (phonetic) to transfer to  
23 the division director of the Bureau  
24 of Professional Responsibility,  
25 Internal Affairs Division. In April

1 of 1999, I was detached to the Bureau  
2 of Technology Services to the  
3 information management system  
4 project, our technology project. As  
5 a captain, I also was transferred to  
6 the central section of Liquor Control  
7 Enforcement Division. In the year  
8 2000, I was transferred to that  
9 lieutenant's position. And I  
10 eventually was then transferred to  
11 the position I currently hold, which  
12 is the director of administration in  
13 the Bureau of Liquor Control  
14 Enforcement.

15 Q. Okay. So not all of the  
16 assignments that you receive are made  
17 by the commissioner; is that right?  
18 I noticed you said that it was Major  
19 Merryman that made you director of  
20 IAD?

21 A. Well, he requested and asked  
22 me to consider accepting that  
23 transfer. And I told him that I  
24 would do whatever he asked me to do  
25 if it were determined in his mind

1     that that was the best move for the  
2     agency.

3     Q.       My question was, that was a  
4     decision made by Major Merryman,  
5     rather than the commissioner?

6     A.       Not to my knowledge. I don't  
7     believe Major Merryman made that  
8     transfer independent, but I don't  
9     know for sure. I really don't.

10    Q.       Have you ever turned down any  
11    promotions?

12    A.       Yes.

13    Q.       Can you tell me about what  
14    promotions you turned down and the  
15    reasons for that?

16    A.       I turned down promotions to  
17    sergeant in 1990 or so. I don't  
18    recall. I believe I turned that down  
19    on four occasions, possibly three  
20    occasions. The reason I turned those  
21    promotions down were because they  
22    would remove me from my role as  
23    caretaker for my then five-year-old  
24    son. They would involve a transfer  
25    and it would have impacted ---.

1 Q. It would have required you to  
2 move?

3 A. Yes, ma'am. It would have  
4 impacted on my ability --- I have  
5 primary custody of my oldest son,  
6 which is subject to scrutiny if  
7 there's a significant change in my  
8 living conditions or living  
9 arrangements that have been  
10 established for him.

11 Q. How old is your son now?

12 A. My oldest son is 14.

13 Q. So he was around, you said  
14 four or five at the time that you  
15 were turning down promotions?

16 A. Yes. He was born in '87, and  
17 that was, yes, four or five. That's  
18 correct. Sorry.

19 Q. Now, you briefly talked about  
20 when you were in patrol, essentially,  
21 that you did serve as a criminal  
22 investigator some of the time?

23 A. Yes.

24 Q. Can you tell me about your  
25 investigative experience?

1 A. Well, like ---.

2 ATTORNEY BAILEY:

3 I'm going to object to  
4 the form of the question. You  
5 can respond.

6 A. I'm not sure exactly what  
7 you're after, but I'll try. I mean,  
8 I'm not sure I understand ---.

9 BY ATTORNEY GUIDO:

10 Q. That's all right. I'll try  
11 again.

12 A. Okay.

13 Q. I don't want you to answer if  
14 you don't understand what I'm getting  
15 at. You were never assigned to a  
16 criminal investigation to the unit;  
17 right?

18 A. No. I was assigned to a  
19 criminal investigation unit.

20 Q. When was that?

21 A. Well, it was when I was in  
22 Troop G, McConnellsburg. Again, I'm  
23 just going to have to try to estimate  
24 this. It would have been about 1986.

25 Q. How long were you in the

1 criminal investigation unit?

2 A. I was full time assigned to  
3 that unit about four months and then  
4 part time, I don't even know,  
5 probably until I made corporal. I  
6 don't recall.

7 Q. Now, can you give me years?  
8 Was it years, months?

9 A. Well, I made corporal and  
10 transferred in February of '87. So I  
11 can only guess at that one. Maybe  
12 six months part time. I really don't  
13 remember now.

14 Q. What do you mean by part time?

15 A. Well, that's a very small  
16 station. We only had nine patrol  
17 troopers. It was not uncommon for  
18 many of us to be assigned, although  
19 we may have been assigned to a patrol  
20 --- pardon me, although we were  
21 assigned to a patrol roster, except  
22 for the time that some of us did  
23 serve full time in the criminal unit,  
24 it was not uncommon to be assigned  
25 follow-up or initial investigations

1 on a routine basis.

2 Q. How many people were in that  
3 criminal unit?

4 A. Two, full time.

5 Q. Can you give me an estimate of  
6 how many criminal cases you've  
7 investigated?

8 A. In my career?

9 Q. Yes.

10 A. I would have to say probably  
11 hundreds. I don't know.

12 Q. What kinds of cases were they?

13 A. I've investigated, pardon me,  
14 a gamut of criminal investigations  
15 from summary offenses through  
16 homicides.

17 Q. What homicides were you  
18 assigned to?

19 A. I was assigned to one that I  
20 can recall when I was at Troop G,  
21 McConnellsburg. And you'll have to  
22 forgive me, I don't recall the victim  
23 or the suspect's names. I don't  
24 recall.

25 Q. Were you the lead

1 investigator?

2 A. No.

3 Q. How many cases, criminal  
4 cases, were you the lead  
5 investigator?

6 A. Criminal cases?

7 Q. Yes.

8 ATTORNEY BAILEY:

9 Could you define lead  
10 investigator for us?

11 BY ATTORNEY GUIDO:

12 Q. Well, the primary  
13 investigator, that was your  
14 responsibility, you were the primary  
15 ---?

16 A. Again, I can only guess at  
17 that. I'm going to say probably  
18 hundreds. I don't really know.

19 Q. Do you know --- can you give  
20 me an idea how many felonies?

21 A. I would have no idea. I have  
22 no way of estimating that for you.

23 Q. How many corruption cases have  
24 you investigated?

25 ATTORNEY BAILEY:

1 Do you mean public  
2 corruption?

3 ATTORNEY GUIDO:

4 Public corruption, yes.

5 A. Well, certainly one --- no, as  
6 the lead investigator, none come to  
7 mind.

8 BY ATTORNEY GUIDO:

9 Q. How about just as assisting  
10 the investigation?

11 A. Other than the issue that's  
12 the centerpiece of this lawsuit, I  
13 don't recall where public corruption  
14 was a case that I might have  
15 supported. I don't recall.

16 Q. To the best you can remember,  
17 the FBI case that started all of this  
18 lawsuit, is the first public  
19 corruption case you worked on?

20 A. I would reserve the  
21 opportunity to come back to that one.  
22 To tell you the truth, that's not a  
23 question I thought of. There's  
24 nothing comes to mind.

25 Q. Okay. How about organized

1 crime? Have you done any organized  
2 crime cases?

3 A. No, no.

4 Q. Before September 1998, how  
5 many times have you worked on cases  
6 with the FBI?

7 A. On no occasions. I recall a  
8 seizure or two seizures that I was  
9 assigned as a part of a work unit  
10 when I was in Troop G. They were ---  
11 one was a clandestine lab and another  
12 was another drug case. But, you  
13 know, I was a worker bee.

14 Q. When you're talking about  
15 seizures, are you talking about  
16 seizing drugs?

17 A. Yes.

18 Q. Property?

19 A. Yes, property. The detail I  
20 was assigned to was property seizure.

21 Q. Okay. Would that be property  
22 that was --- I guess I'm wondering if  
23 you've got, you know, anticipation of  
24 forfeiture ---

25 A. Yes.

1 Q. --- or as evidence?

2 A. No, at that point it was  
3 forfeiture proceedings.

4 Q. Okay.

5 A. It was land, equipment, and so  
6 forth.

7 Q. So the two cases that you  
8 recall working with the FBI prior to  
9 September 1998, those were cases in  
10 which you described yourself as a  
11 worker bee?

12 A. Yes, ma'am. I think I might  
13 have missed a question or an answer  
14 that you had asked a question to. If  
15 I could come back to it also.

16 Q. Yes.

17 ATTORNEY BAILEY:

18 You can do that at  
19 anytime. If you want to  
20 re-visit or want to add to,  
21 correct or modify an answer,  
22 you're totally free to do  
23 that.

24 A. Well, you know, if I'm wrong,  
25 give me the time out. But I believe

1 you were eventually going to get to  
2 an issue of training or experience.  
3 And I was just going to answer that,  
4 like all troopers starting in the  
5 academy with academy training, I  
6 received what was offered both in  
7 that academy and certainly at the  
8 other police academy, with respect to  
9 criminal investigations. But when I  
10 was also assigned to Troop G,  
11 McConnellsburg, I did attend a two-  
12 week criminal investigation course  
13 also offered by the academy.

14 BY ATTORNEY GUIDO:

15 Q. Would that be here in  
16 Harrisburg?

17 A. In Hershey. And a variety of  
18 related in-service classes over the  
19 years. I think I could begin to name  
20 all of them but ---.

21 Q. I'm sure. Skipping back to  
22 where we were with the FBI, you  
23 didn't really have any contacts at  
24 the FBI?

25 A. No, no.

1 Q. And it wasn't as if in  
2 September of 1998, it wasn't as if  
3 you had a close relationship with  
4 anybody at the FBI?

5 A. No.

6 Q. While you were in the Bureau  
7 of Research and Development, what  
8 investigative duties did you have?

9 A. None.

10 Q. When you were assigned to the  
11 Systems and Process Review Division  
12 of the Bureau of Professional  
13 Responsibility, what investigative  
14 duties did you have?

15 A. I didn't have any  
16 investigative duties. But for five  
17 years our role, one of the primary  
18 functions that the division served  
19 when I was there, was reviewing  
20 criminal investigations for  
21 thoroughness, content, applicability  
22 of actions and so forth. We were,  
23 again, I'm not sure what you might or  
24 might not know about staff  
25 inspections, but compliance and

1 ensuring that investigations were  
2 conducted logically, leads were  
3 followed and proper action taken. It  
4 was very much an issue that staff  
5 inspection followed up on, when I was  
6 assigned there.

7 Q. I don't know anything about  
8 staff inspections, so maybe you can  
9 explain more to me about how that  
10 works. How do you determine what  
11 inspection is going to take place,  
12 when?

13 A. How it was set up when I was  
14 there was we identified all of the  
15 various department components. And  
16 principally that would be troop and  
17 bureau operations, divisions, station  
18 locations. And we developed a master  
19 schedule on --- I believe initially  
20 it was a two-year cycle. And then  
21 the accreditation requirement  
22 changed, so then it became a  
23 three-year cycle, which means that  
24 once every two or three years,  
25 depending on what the prevailing

1 regulation is, that component is  
2 inspected for compliance with  
3 regulations.

4 We have three officers  
5 assigned to a lieutenant. And those  
6 three individuals would each be  
7 assigned a function within that  
8 station or division location to  
9 inspect, that being crime patrol or  
10 staff. And the task of the inspector  
11 is to review the entity that they are  
12 assigned for compliance, make notes,  
13 and develop a report of findings.  
14 The lieutenant and the section  
15 commander, which is a job that I  
16 initially had when I was transferred,  
17 was as an oversight or an  
18 overview of the entire process.

19 Q. And what does an inspection  
20 entail?

21 A. Well, the very reason I  
22 accepted that position when offered  
23 to me is what it entailed or what we  
24 were asked to do was to develop a  
25 program that had credibility and

1 served the needs of the department,  
2 as opposed to being just an exercise  
3 in widgeting. There's a part of any  
4 inspection that does have inspection  
5 in its pure form, meaning, are things  
6 hung the way they're supposed to be  
7 and are various posters available and  
8 whatnot. But the very reason I  
9 accepted that position when offered,  
10 is I was told that I had a chance to  
11 be a part of writing a regulation and  
12 being an architect of the process  
13 that looks beyond that, looks beyond  
14 are just the blocks on the form  
15 filled out, did the trooper actually  
16 take the appropriate action, did  
17 someone respond to the scene.

18 Q. As a practical matter, how do  
19 you do that? You as the inspector,  
20 as a practical matter, how do you  
21 make sure that the trooper did what  
22 he was supposed to do?

23 A. For example, if we're talking  
24 about investigative reports, we would  
25 take a random sample of reports over

1 an identified period of time or take  
2 every report over an identified  
3 period of time, look through them,  
4 study them, look for discrepancies,  
5 and in many, many instances, make  
6 phone calls or personal visits to the  
7 victims or witnesses and identify  
8 what our function was and that we  
9 were just basically a compliance  
10 monitoring role. We were quality  
11 assurance. And we talked to  
12 individuals that our troopers had  
13 dealt with to see if we were  
14 performing up to the department's  
15 expectations.

16 Q. Were you looking at whether an  
17 individual --- and maybe it's both.  
18 If the answer's both, fine. Were you  
19 looking at whether an individual  
20 state police member was performing up  
21 to standards or looking at the  
22 station or ---?

23 A. Actually, there's both. And  
24 additionally, we were looking at how  
25 the department's performing. Our

1 first --- when we found, as an  
2 illustration, when we found an area  
3 of deficiency, our first task was to  
4 look to see if the regulations were  
5 flawed or if there was a policy void  
6 that existed that was the reason for  
7 the noncompliance. And if that were  
8 the case, then we made  
9 recommendations for change.

10 Q. Okay. What kind of problems  
11 would you be able to identify?

12 A. I'm not sure where to begin.  
13 The most significant ones, if you  
14 want me to start there, might relate  
15 to the handling of evidence and  
16 security of evidence and the evidence  
17 process, the maintenance of the  
18 property management system in its  
19 entirety. We would conduct a full  
20 and complete inventory of every  
21 property room in the state.

22 Q. What kind of problems might  
23 come up with respect to how evidence  
24 was handled?

25 ATTORNEY BAILEY:

1 I'm going to pose an  
2 objection. Do you want him to  
3 continue with the kinds of  
4 areas he was investigating or  
5 do you want to move on to this  
6 next question you asked? He  
7 had not completed responding.

8 BY ATTORNEY GUIDO:

9 Q. Okay. If you didn't complete  
10 responding to investigating, we can  
11 go back to that in a second. But  
12 right now, I just want to finish this  
13 question while I'm thinking about it.

14 ATTORNEY BAILEY:

15 All right. The  
16 objection's noted. You may  
17 respond.

18 BY ATTORNEY GUIDO:

19 Q. I don't need lots of them, I  
20 just want some examples so I can get  
21 an understanding of what you did.

22 A. In property rooms, for  
23 example, which was actually a  
24 Fourth-rated component when I was  
25 assigned to inspections or it evolved

1 to a fourth and separately rated  
2 component because of its importance,  
3 we found a gamut of problems. From  
4 inadequate storage areas, meaning,  
5 there was some problem with the  
6 facility where our property was being  
7 stored, up through missing property  
8 records, missing property, criminal  
9 conduct on the part of our members  
10 assigned to those security functions.

11 Q. Okay. And I believe, Mr.  
12 Bailey let me go back to my original  
13 question because he didn't think you  
14 finished answering it. And my  
15 original question was, while you were  
16 in the Systems and Process Review  
17 Division, what investigative duties  
18 you had? So I thought that you had  
19 said basically none, that it was  
20 doing inspections. If you had  
21 something to add, please do.

22 A. I had no role as a primary  
23 responding officer to a scene to take  
24 information from a complainant.

25 Q. Okay.

1 A. But at the same time, we were  
2 --- I was among nine or ten people  
3 tasked in the whole entire department  
4 with the review of criminal  
5 investigations for their thoroughness  
6 and content and accuracy and things I  
7 believe I've already described.

8 Q. Yes. I think I understood  
9 your answer. I wanted to go back to  
10 where I was at when you would find a  
11 problem, some type of problem that  
12 had been done in the investigation.  
13 At one point you mentioned maybe  
14 leads that hadn't been followed up  
15 on.

16 A. Yes.

17 Q. What would you do about that?

18 A. If there was misconduct, if we  
19 determined that there was potential  
20 misconduct on the part of a member or  
21 a failure to complete his assigned  
22 responsibilities, we would,  
23 consistent with the processes that  
24 exist and are supposed to be  
25 followed, we would approach the

1 station commander or a unit  
2 supervisor, depending on the exact  
3 unit we're in. We would give the  
4 information to them for further  
5 action. And in many instances, that  
6 resulted in a Bureau of Professional  
7 Responsibility, Internal Affairs  
8 complaint sheet being initiated.

9 Q. Would that be up to you to  
10 initiate that or would the station  
11 commander prepare that?

12 A. The station commander.

13 Q. Now, it sounds to me that when  
14 you were in the systems and --- it's  
15 such a long name --- systems and  
16 process ---.

17 A. SPR.

18 Q. SPR. I keep stumbling over  
19 it. I guess that required you to  
20 have very detailed knowledge of the  
21 department's rules and regulations?

22 A. Yes.

23 Q. And you were assigned --- you  
24 moved from SPR to Internal Affairs  
25 when?

1 A. May 2nd, 1998. That's State  
2 Police Day.

3 Q. What's State Police Day?

4 A. May 2nd.

5 Q. What's the day?

6 ATTORNEY BAILEY:

7 You don't know that?

8 ATTORNEY GUIDO:

9 I don't know.

10 ATTORNEY BAILEY:

11 That's terrible.

12 ATTORNEY GUIDO:

13 It's terrible, but what  
14 is it?

15 A. That's the day the state  
16 police was created.

17 BY ATTORNEY GUIDO:

18 Q. What year was that?

19 A. What year we were created?  
20 1905.

21 Q. 1905. I did have one thing  
22 right. And you were transferred  
23 there when Major Merryman asked you  
24 to move from one section of BPR to  
25 the other.

1 A. Yes.

2 Q. Essentially, both of those two  
3 would be under Major Merryman, who  
4 was the bureau director?

5 A. Those two divisions comprised  
6 BPR, yes.

7 Q. Okay. And when you first went  
8 to internal affairs, you started  
9 there as the director?

10 A. Yes.

11 Q. And what was your --- who was  
12 your immediate supervisor?

13 A. Major Merryman.

14 Q. How long was Major Merryman  
15 your immediate supervisor?

16 A. From May 2<sup>nd</sup> --- wait a minute.  
17 Yes. From May 2nd, 1998, until he  
18 was transferred in September of '98.

19 Q. Which is when you then became  
20 the acting bureau director?

21 A. Yes.

22 Q. And he was also your immediate  
23 supervisor the entire time you were  
24 at SPR?

25 A. Not the entire time.

1 Q. Okay. At the end of it, I  
2 guess? How long was he your  
3 supervisor at SPR?

4 A. I don't know when he  
5 transferred.

6 Q. Okay.

7 A. He supervised me there, but I  
8 don't know when --- I was already the  
9 captain of that division when he came  
10 in. But I don't know when he was  
11 transferred.

12 Q. Who was the head of the bureau  
13 before him?

14 A. I'm not sure of the order. We  
15 had several. I believe preceding  
16 Major Merryman was Major Woodring  
17 (phonetic), Paul Woodring. But if it  
18 wasn't him, it was Major Amos  
19 (phonetic). I don't remember the  
20 sequence, though.

21 ATTORNEY BAILEY:

22 I think it was  
23 Woodring.

24 BY ATTORNEY GUIDO:

25 Q. So while you were in internal

1       affairs, the only two supervisors  
2       that you had, immediate supervisors,  
3       would have been Major Merryman and  
4       then Major Conley?

5       A.       Correct.

6       Q.       And can you describe to me  
7       your duties as director of the  
8       Internal Affairs Division?

9       A.       As director of the Internal  
10      Affairs Division, my duties were to  
11      --- I was the supervisor/division  
12      director of the entire internal  
13      affairs process, meaning,  
14      investigations or complaints  
15      received, ensuring that they were  
16      assigned for investigation and  
17      investigations were completed, sent  
18      to the division and routed to the  
19      respective adjudicators.

20      Q.       Did you ever personally  
21      conduct internal affairs  
22      investigations?

23      A.       Yes.

24      Q.       How many?

25                      ATTORNEY BAILEY:

1                   Maybe we should define  
2                   a little better what you mean  
3                   by personally conduct.

4           BY ATTORNEY GUIDO:

5           Q.           Were you ever the person  
6           assigned to --- conduct an internal  
7           affairs case?

8           A.           Yes, not while I was the  
9           director, if that's what you mean.

10          Q.           Let's do both. While you were  
11          the director; did you? Or did you  
12          ever assign any cases to yourself?

13          A.           I would hope I was smart  
14          enough not to do that. No, not that  
15          I recall.

16          Q.           Okay. When were you in  
17          internal affairs when you weren't the  
18          director?

19          A.           I wasn't. But I was, as a  
20          troop member and as a bureau member,  
21          I was assigned investigations by BPR  
22          to complete.

23          Q.           When you were at --- not when  
24          you were in internal affairs, but  
25          when you were basically in the patrol

1 division?

2 A. Yes. When I was a trooper,  
3 assigned to Troop G, I recall one and  
4 I think I might have been assigned  
5 two, but I don't recall. I was also  
6 assigned to conduct an investigation  
7 when I was stationed, when I was  
8 assigned to the Bureau of Research  
9 and Development.

10 ATTORNEY BAILEY:

11 For the record, could I  
12 suggest that maybe a little  
13 information on the  
14 relationship between BPR and  
15 internal affairs, what they  
16 are, to help understand this  
17 record a little better at this  
18 point.

19 A. BPR, as I've said, is  
20 comprised of two divisions. I think  
21 what the issue might be and I think  
22 what we're after to clarify is, not  
23 all internal affairs investigations  
24 are assigned to Internal Affairs  
25 Division personnel. They are

1 assigned to troop investigators or  
2 bureau personnel, if it's determined  
3 by either director that that's  
4 appropriate and troop commander that  
5 that's an appropriate assignment to  
6 make. So I conducted internal  
7 affairs investigations but I wasn't  
8 assigned to internal affairs.

9 BY ATTORNEY GUIDO:

10 Q. Who makes the decision about  
11 whether it's going to be handled by  
12 internal affairs or by a member of  
13 the troop?

14 A. That's a matter that's  
15 generally discussed between the troop  
16 commander and the director of  
17 internal affairs.

18 Q. If it's handled by the troop,  
19 does that information eventually make  
20 its way to internal affairs?

21 A. The investigation, you mean?

22 Q. Yes.

23 A. Yes.

24 Q. And is it assigned an internal  
25 affairs number?

1 A. Yes. According to our  
2 procedures, internal affairs  
3 investigations, complaints, when  
4 they're received and assigned, are  
5 assigned a BPR control number,  
6 sequentially, at that point, yes.

7 Q. At what point is that done,  
8 before or after the investigation?

9 A. That's done when the complaint  
10 is received, as I recall, not  
11 afterward.

12 Q. And so the best you remember,  
13 you've done two, maybe three, of  
14 those kind of internal  
15 investigations?

16 A. Yes.

17 ATTORNEY GUIDO:

18 I'd like that to be  
19 marked as Three. It's just  
20 the Complaint. I'll give you  
21 a copy.

22 (Deposition Exhibit  
23 Number Three marked for  
24 identification.)

25 BY ATTORNEY GUIDO:

1 Q. I'm going to hand you Exhibit  
2 Three. I just wanted to make sure we  
3 all had a copy. And I'm going to go  
4 through your Complaint with you and  
5 ask some questions about it. If at  
6 anytime, you know, anytime you decide  
7 you need a break, signal me if you  
8 need to go to the men's room or  
9 anything like that.

10 ATTORNEY BAILEY:

11 Syndi, the only thing  
12 is, so to help you plan,  
13 although, I realize there's a  
14 lot of time yet, I'm just  
15 getting off the flu and  
16 probably going to need some  
17 time like around noon or so,  
18 a decent break, to get some  
19 lunch or broth or something.  
20 So just so you can, you know,  
21 plan on that.

22 ATTORNEY GUIDO:

23 Okay. No problem.

24 Like I said ---. Okay.

25 BY ATTORNEY GUIDO:

1 Q. Start on page six, paragraph  
2 20. That's the very beginning of the  
3 operative facts of the Complaint.

4 A. Yes.

5 Q. And it says in paragraph 20,  
6 Darrell G. Ober, on or about  
7 September 1998, was one of the  
8 brightest and the best, a rising star  
9 in the Pennsylvania State Police  
10 organization. Could you explain what  
11 you base that assessment on?

12 A. At that point in time in my  
13 career, I think I had made captain in  
14 12 years. My work record up until  
15 that point was unblemished. On the  
16 past three promotion or four  
17 promotion exams, I finished no lower  
18 than sixth in the entire state. I  
19 was asked to participate in things, I  
20 believe, that are documented on my  
21 resume.

22 ATTORNEY BAILEY:

23 Answer the question  
24 fully and completely, please.

25 A. At that point in my career, I

1 was the director of the Internal  
2 Affairs Division, which in state  
3 police organizations or any police  
4 organizations, is generally thought  
5 of as one of the, in my opinion,  
6 generally thought as one of the most  
7 highly sought after positions. I was  
8 asked to transfer to that position,  
9 based on my track record and my work  
10 record, having completed a five-year  
11 tour of the Systems and Process  
12 Review Division, as I've mentioned  
13 earlier, where I was an architect in  
14 creating the whole division and it  
15 was running quite successfully.

16 I had been asked to  
17 participate in legislative budget and  
18 finance review committee responses on  
19 behalf of the Commissioner. I had  
20 been asked to serve on cadet review  
21 boards, appeal, --- not appeal  
22 boards, but background review boards.  
23 Actually, I volunteered for those  
24 assignments. I volunteered to be a  
25 part of the Pennsylvania Emergency

1 Management detail. So at that point  
2 in my career, in comparison to my  
3 peers, I believe that would be a very  
4 accurate statement, situated as I was  
5 in 1998.

6 BY ATTORNEY GUIDO:

7 Q. Okay. Now, you mentioned that  
8 your career at that point was  
9 unblemished. You had had internal  
10 affairs investigations conducted on  
11 you before; correct?

12 A. Absolutely.

13 Q. But they were just determined  
14 to be unfounded?

15 A. They were unfounded  
16 complaints, yes, ma'am.

17 Q. So you ended up being  
18 vindicated by those investigations?

19 A. Yes, ma'am.

20 Q. And then you go on to talk  
21 about being a cum laude graduate of  
22 Pennsylvania State University. Do  
23 you remember what your GPA was at  
24 Penn State?

25 A. 3.42.

1 Q. And I think Penn State uses  
2 the term, with distinction?

3 A. Yes, ma'am.

4 Q. As opposed to cum laude?

5 A. That's correct.

6 Q. And adds with distinction,  
7 with high distinction, with highest  
8 distinction; is that right?

9 A. Yes. That sounds familiar.

10 Q. Okay. You also mentioned  
11 graduating number one from the  
12 Pennsylvania Law Enforcement Academy.  
13 How many people were in your class?

14 A. I believe about 25 or so.

15 Q. And you actually graduated  
16 second in that class; right?

17 A. No. I have a plaque that says  
18 I was the top cop in my class.

19 ATTORNEY GUIDO:

20 Just mark that ---  
21 sorry, we're kind of at a  
22 distance here.

23 ATTORNEY BAILEY:

24 Is this Number Four?

25 ATTORNEY GUIDO:

1 Yes.  
2 (Deposition Exhibit  
3 Number Four marked for  
4 identification.)

5 BY ATTORNEY GUIDO:

6 Q. I'm going to hand you Exhibit  
7 Number Four.

8 A. Uh-huh (yes).

9 Q. Which is from your official  
10 personnel file. That's the official  
11 transcript from the Law Enforcement  
12 Academy. And what does it rank you  
13 in the class?

14 A. This is the --- class rank, it  
15 says 2 of 20.

16 Q. Okay. So there were 20 in the  
17 class?

18 A. Apparently.

19 Q. And at least according to the  
20 transcript, you were number two in  
21 the class? Pretty good.

22 ATTORNEY BAILEY:

23 Well, that's his class  
24 rank. That's not his overall  
25 grade.

1 A. Yeah, they ---.

2 BY ATTORNEY GUIDO:

3 Q. I'm just asking your class  
4 rank, 2 out of 20; correct?

5 A. Let me explain.

6 ATTORNEY BAILEY:

7 One moment, please. I  
8 want you to bring --- do you  
9 have a plaque, you say?

10 A. Yes. They gave out different  
11 awards. Scholastically, I was  
12 second. I can recall who was first.  
13 He beat me by one hundredth of a  
14 percentage point. It was Brian  
15 Hershey.

16 BY ATTORNEY GUIDO:

17 Okay.

18 ATTORNEY BAILEY:

19 Hold just a second.

20 ATTORNEY GUIDO:

21 Okay.

22 ATTORNEY BAILEY:

23 You're very kind.

24 Continue, please.

25 A. They also gave a firearms

1 score, which I believe I was second,  
2 also. I can't recall that. They  
3 gave a physical fitness award, which  
4 I don't think I was close, candid  
5 with you. But the most sought after  
6 trophy that I can recall many years  
7 ago was the top cop award, which was  
8 the overall best candidate, which a  
9 member of that class, which was me.  
10 And I've been given a plaque by the  
11 director that says it was the top cop  
12 award - - - .

13 BY ATTORNEY GUIDO:

14 Q. And that's the name of the  
15 award?

16 A. Yes.

17 ATTORNEY BAILEY:

18 Can you make a copy of  
19 that, please?

20 A. I'll be glad to.

21 ATTORNEY BAILEY:

22 And provide it to me.

23 Thank you.

24 BRIEF INTERRUPTION

25 ATTORNEY BAILEY:

1 I have a copy for you,  
2 Darrell.

3 ATTORNEY GUIDO:

4 He has a copy. You can  
5 keep the copy.

6 ATTORNEY BAILEY:

7 That has to go to the  
8 Court Reporter, but I have a  
9 copy for you that's marked.  
10 Okay?

11 A. Thanks.

12 ATTORNEY GUIDO:

13 For everything I ask  
14 you about, I'll make sure that  
15 your attorney gets ---

16 A. I don't think I've ---.

17 ATTORNEY GUIDO:

18 --- gets a copy. Okay.

19 BY ATTORNEY GUIDO:

20 Q. Now, in that same paragraph  
21 20, you mention that your work  
22 history was replete with numerous  
23 career enhancing achievements,  
24 citations, experience,  
25 qualifications. What citations,

1 awards, honors, et cetera, did you  
2 receive as a state trooper?

3 A. Oh, over the years I've been  
4 given numerous letters of  
5 appreciation. Well, I don't know if  
6 they're called letters of  
7 appreciation. Let me back up. I've  
8 been given numerous pieces of  
9 correspondence from various  
10 supervisors acknowledging the work  
11 that I've performed on behalf of the  
12 agency. I, quite frankly, wouldn't  
13 know where to begin. I've had  
14 numerous ---.

15 Q. Do you still have copies of  
16 any of them?

17 A. Yes. I believe I have copies  
18 of some. I don't know if I have them  
19 all.

20 Q. Okay. Have you ever received  
21 a letter of commendation from your  
22 troop commander or a bureau director?

23 A. No.

24 Q. Have you ever received a kind  
25 of award or a citation or honor that

1 would go into your official personnel  
2 file?

3 A. Well, I've received letters of  
4 appreciation after the IIMS project.  
5 I don't know whether they went into  
6 my file or not.

7 Q. And you have reviewed your  
8 personnel file; haven't you?

9 A. Yes. Oh, yes.

10 Q. And when you reviewed your  
11 file, do you recall seeing any kinds  
12 of awards, honors, letters of  
13 commendation in your file?

14 A. No.

15 Q. Did you receive any kinds of  
16 commendations, awards, achievements,  
17 et cetera, while you were a police  
18 officer at Indiana University?

19 A. No.

20 Q. How long were you there? I  
21 can't remember.

22 A. About two years.

23 Q. Now, in paragraph 21, you say  
24 that you were named the director of  
25 IAD in May 1998, and in September

1 1998, you became the acting bureau  
2 director. And then paragraph 22 is  
3 something that I think you were  
4 alluding to a little bit ago and I'll  
5 ask you about, where you said that  
6 this career path is customarily  
7 associated in the state police with  
8 advancements to the highest, very  
9 highest ranks in the organization,  
10 including commissioner. And my  
11 question there is when you say this  
12 career path, are you referring to  
13 being the director of the Internal  
14 Affairs Division or being the acting  
15 bureau director? What's the career  
16 path that's associated with being  
17 among the highest ranks?

18 A. Well, I would say it probably  
19 incorporates both. I think by virtue  
20 of selection to internal affairs,  
21 whether it be as an investigator, a  
22 section commander or the division  
23 director, it's my experience that in  
24 the police culture and the corporate  
25 police world that that's generally

1 thought of as one of the more  
2 desirable and lucrative assignments  
3 by virtue of the fact that you are  
4 placed in a sensitive position,  
5 managing some of the most critical  
6 information about the department and  
7 its personnel.

8 This was not the first or only  
9 time I had ever been the acting  
10 bureau director. But being afforded  
11 the opportunity to act in that  
12 capacity is also an honor, because it  
13 gives that person the opportunity to  
14 learn the position of the next rank.  
15 In other words, you are empowered and  
16 given a career opportunity to learn  
17 and perform the activities of the  
18 acting director.

19 Q. And being the acting director  
20 can be something for a few weeks, as  
21 you were, or it could be something as  
22 temporary as while somebody's on  
23 leave; correct?

24 A. Yes.

25 Q. Could someone be acting bureau

1 director for as long as like a year  
2 or something like that or is it more  
3 of a temporary-type situation?

4 A. Well, I think it's intended to  
5 be short term. I suppose it could go  
6 for a year. I can think of an  
7 instance when it was given to someone  
8 for six months or so, off the top of  
9 my head.

10 Q. Okay. And it's not uncommon  
11 for someone to serve as an acting  
12 bureau director and not ultimately  
13 become the bureau director; correct?

14 A. Correct.

15 Q. And not just in BPR, but in  
16 any bureau; right?

17 A. Correct.

18 Q. And as I said, that's partly  
19 because it could just be a very  
20 temporary thing, such as somebody's  
21 on vacation, so you're going to be  
22 acting while they're gone?

23 A. Yes.

24 Q. And you also, in saying that,  
25 you know, it's associated with

1 becoming commissioner, certainly  
2 being the director of internal  
3 affairs or even the director of the  
4 Bureau of Professional  
5 Responsibility, is certainly no  
6 guarantee that you would end up being  
7 the commissioner; correct?

8 A. Correct.

9 Q. Or even a deputy commissioner?

10 A. Correct.

11 Q. I imagine there have been  
12 plenty --- I'll let you finish. I  
13 imagine there have been plenty of  
14 people that were the bureau director  
15 or the director of IAD that never did  
16 make the command staff of the deputy,  
17 of the commissioner or his deputy;  
18 correct?

19 A. Well, I lost the first part of  
20 that. Let me answer it this way.

21 Q. Okay.

22 ATTORNEY BAILEY:

23 I would object to the  
24 form of that question. It's a  
25 little bit leading. I wonder

1           if you might be able to break  
2           it down just a little bit.

3                   ATTORNEY GUIDO:

4                   Sure.

5                   ATTORNEY BAILEY:

6                   It's complex.

7           BY ATTORNEY GUIDO:

8           Q.       What you're saying in here is  
9           that being the director of the  
10          Internal Affairs Division is  
11          something that's associated with  
12          becoming the commissioner. And what  
13          I'm asking you is, you know, wouldn't  
14          there have been lots of directors of  
15          internal affairs that never did make  
16          it to be the commissioner or one of  
17          his deputies?

18          A.       I don't know that I can agree  
19          with the term lots. I would suggest  
20          that there's a high percentage.  
21          There's a higher percentage of  
22          relationship between advancement from  
23          those positions, not just to the  
24          commissioner's office or deputy's  
25          office, but also to other promotions,

1 promotions to the next higher rank.  
2 There's very high correlation in my  
3 recollection between members who have  
4 been assigned to internal affairs and  
5 director of BPR. There's much more  
6 so, I would guess, than any of the  
7 other bureaus.

8 ATTORNEY BAILEY:

9 Counsel, I'd like to  
10 bring to your attention the  
11 language in paragraph 22 is  
12 with advancement to the very  
13 highest ranks in the  
14 organization and underline,  
15 including commissioner.

16 ATTORNEY GUIDO:

17 Right.

18 ATTORNEY BAILEY:

19 So we shouldn't  
20 appropriate that as saying  
21 that that's a necessity or a  
22 requirement for that career  
23 path.

24 ATTORNEY GUIDO: I

25 know.

1 BY ATTORNEY GUIDO:

2 Q. I'm just asking what is meant  
3 --- I'm trying to get at what you  
4 meant by that. And I think that  
5 you're answering my question quite  
6 appropriately.

7 A. You can get your ticket  
8 punched on the way to the top by a  
9 tour through IAD. Does that help?

10 Q. Yes. And also, it's not a  
11 necessity, though; right? I think  
12 that's ---.

13 A. Not to my knowledge.

14 Q. There are people --- I think  
15 maybe even Deputy Commissioner  
16 Westcott never was in charge of  
17 internal affairs or the Bureau of  
18 Professional Responsibility?

19 A. That would be correct.

20 Q. Okay. And while you were the  
21 director of internal affairs, as  
22 director, would you be responsible  
23 for overseeing all of the  
24 investigations that are assigned to  
25 that division?

1 A. Yes.

2 Q. Would you also be responsible  
3 for overseeing all of the ones that  
4 are assigned out to the troops, as  
5 well?

6 A. Yes.

7 Q. In doing that, would you be  
8 making --- I guess, Administrative  
9 Regulation 4-25, is that sort of like  
10 the bible of internal affairs? If  
11 you don't like that characterization,  
12 you can change it.

13 A. Yeah. I would not say that.  
14 But it is the document, the source  
15 document, for internal affairs.

16 Q. It's pretty much what governs  
17 how internal affairs is ---?

18 A. Yes.

19 Q. And would it be your  
20 responsibility as the director to  
21 make sure that AR 4-25 was complied  
22 with?

23 A. Yes.

24 Q. Both by people in your  
25 division and by people out in the

1 troops?

2 A. Yes.

3 Q. You had mentioned that when  
4 you had been out in the troop, you  
5 had done two or three cases. Do you  
6 remember what those cases were by  
7 name or by subject?

8 ATTORNEY BAILEY:

9 Objection to the form  
10 of that question. You may  
11 respond.

12 A. The one --- there were three  
13 subjects. I believe there were three  
14 subjects in the one investigation.  
15 And they were assigned to Troop G,  
16 Bedford. And I believe one of the  
17 subjects, maybe he could have been  
18 the only subject, was Gerald Polca.  
19 P-O-L-C-A, I think is how that was  
20 spelled. The other one that I can  
21 recall that I was assigned when I was  
22 in the Bureau of Research and  
23 Development, was that I was assigned  
24 to complete an investigation on  
25 Sergeant Byron Lewis. Those are the

1 two that come to mind. There may not  
2 have been any others, but those are  
3 the two that come to mind.

4 BY ATTORNEY GUIDO:

5 Q. Do you remember if those  
6 turned out to be ---?

7 ATTORNEY BAILEY:

8 And incidentally, just  
9 Counsel, before you continue,  
10 if there are any responses  
11 that include names and for any  
12 confidential reasons should be  
13 redacted, I certainly would  
14 agree to that. But I think to  
15 enable --- you know, you go  
16 ahead and answer her questions  
17 fully and completely, but  
18 maybe we should have that  
19 understanding.

20 There may be some  
21 confidential issues here. And  
22 I want to make clear that, you  
23 know, he's free to answer  
24 questions. We have to have an  
25 understanding here that there

1 needs to be some protection of  
2 individuals' rights. Okay?  
3 Darrell, do you understand  
4 that?

5 A. Uh-huh (yes).

6 BY ATTORNEY GUIDO:

7 Q. Do you recall whether those  
8 ended up being founded or unfounded,  
9 if you recall?

10 A. I don't believe I would know  
11 that. I was the investigator.

12 Q. The investigator doesn't  
13 necessarily find out the ---?

14 A. Correct. What the ultimate  
15 adjudication was, I don't know if I -  
16 ---.

17 Q. The investigator, you go out,  
18 you gather the facts and then you  
19 give it to somebody else who makes  
20 the decision?

21 A. Correct.

22 ATTORNEY BAILEY:

23 Can I follow with just  
24 one small question that might  
25 help that?

1 ATTORNEY GUIDO:

2 Sure.

3 ATTORNEY BAILEY:

4 Does the investigator  
5 in those situations make a  
6 recommendation?

7 A. No.

8 ATTORNEY BAILEY:

9 Okay.

10 BY ATTORNEY GUIDO:

11 Q. So when you became the  
12 director of internal affairs, you  
13 really didn't have a lot of internal  
14 affairs experience?

15 A. Correct.

16 Q. I suppose that would put you  
17 through somewhat of a learning curve;  
18 wouldn't it?

19 A. Yes.

20 Q. And I guess being new to the  
21 area of responsibility, it would be  
22 normal to make mistakes sometimes?

23 A. I think that's probably an  
24 accurate statement.

25 ATTORNEY BAILEY:

1 I'm going to object  
2 both to the question and to  
3 the response.

4 BY ATTORNEY GUIDO:

5 Q. Well, you certainly made  
6 mistakes sometimes; didn't you?

7 A. Well, I guess I'm giving you  
8 --- maybe I'm giving you too much of  
9 the benefit of the doubt. I mean, I  
10 go back to --- first of all, I'm  
11 married. So I darn well know I make  
12 mistakes all the time. Are we  
13 talking about ---?

14 Q. Now, we don't want to have  
15 your wife think the mistake was  
16 getting married.

17 ATTORNEY BAILEY:

18 The reason I'm  
19 objecting to the question is  
20 speculation. But I don't want  
21 you speculating. We're  
22 talking about generic things  
23 and we can certainly, you  
24 know ---.

25 A. Ms. Guido, you're deposing me,

1 and I know the answer to have I ever  
2 made mistakes ---

3 BY ATTORNEY GUIDO:

4 Q. Is yes.

5 A. --- is yes, not no, because  
6 that wouldn't be accurate. So does  
7 that help?

8 Q. Sure.

9 A. Okay.

10 Q. Basically, what I'm getting at  
11 is, you know, like I said, there's a  
12 learning curve. Because this was a  
13 new area of responsibility for you  
14 that you hadn't worked there before;  
15 right?

16 A. Yes.

17 Q. And you started working there  
18 in May of '98; correct?

19 A. Yes.

20 Q. Paragraph 23, on or about late  
21 September, early October 1998, you  
22 were contacted by the FBI about a  
23 political corruption case. How do  
24 you pinpoint the date?

25 A. I didn't pinpoint the date.

1 Q. It says to September or early  
2 October.

3 A. Well, it was my recollection  
4 that it was during the time that I  
5 was the acting bureau director.

6 Q. Okay. So that would have had  
7 to be between --- when did you become  
8 the acting bureau director? Was that  
9 September 17th or something like  
10 that?

11 A. That sounds correct.

12 Q. So it would have to be after  
13 mid September?

14 A. That was my recollection, yes.

15 Q. And then Conley was appointed  
16 October 3rd. So it would have to be  
17 before that; correct?

18 A. That's correct.

19 Q. Can you be more specific about  
20 who contacted you?

21 A. I had a discussion about this  
22 issue with Special Agent Ralph Kush,  
23 K-U-S-H.

24 Q. How did he contact you?

25 A. We spoke by telephone.

1 Q. Where was that at? Where were  
2 you at?

3 A. Well, I assume I was in my  
4 office. I don't recall being  
5 anywhere else.

6 Q. Did he call you?

7 A. That's my recollection, yes.

8 Q. Did he say how he got your  
9 name?

10 A. No. I don't recall that, that  
11 he did.

12 Q. Do you know if he --- did he  
13 say whether he contacted you simply  
14 because you were the head of the  
15 bureau or because of something about  
16 you personally; did he mention?

17 A. Me personally? No, I don't  
18 know Ralph, Agent Kush. I don't  
19 recall. If he said anything ---  
20 well, I would just be speculating. I  
21 don't know.

22 ATTORNEY BAILEY:

23 Don't speculate.

24 BY ATTORNEY GUIDO:

25 Q. I'm just trying to get at what

1 you remember what was actually said.  
2 If you don't remember what was said,  
3 it's okay to say no.

4 ATTORNEY BAILEY:

5 Why not just ask him  
6 what was done in  
7 conversation?

8 ATTORNEY GUIDO:

9 Don, because I'm asking  
10 the questions.

11 ATTORNEY BAILEY:

12 Well, I know. But I  
13 don't want to object and I  
14 don't want to obfuscate, you  
15 know, your deposition, but  
16 they're suggestive and I'm  
17 giving you a lot ---.

18 ATTORNEY GUIDO:

19 Well, I didn't  
20 necessarily like all your  
21 questions either.

22 ATTORNEY BAILEY:

23 I'm giving you a lot of  
24 leeway.

25 BY ATTORNEY GUIDO:

1 Q. In any event, when Agent Kush  
2 contacted you, I think you told us  
3 before that you didn't --- well, you  
4 just said you didn't know him.

5 A. No.

6 Q. And you told us before you  
7 really hadn't worked with anybody at  
8 the FBI before?

9 A. That's correct.

10 Q. First of all, I do want to ask  
11 you, what do you remember that he  
12 told you during that first phone  
13 call?

14 A. What I recall from that  
15 conversation is this. Agent Kush  
16 told me that the FBI, the western  
17 office or whatever it's referred to  
18 as, was conducting a political  
19 corruption case in western  
20 Pennsylvania. And during that  
21 investigation, it came to their  
22 attention that there was an  
23 individual who believed that through  
24 a series of payoffs or through  
25 exerting political influence, that he

1 could gain entry into the State  
2 Police Academy as a cadet.

3 Q. Did he mention any names  
4 during that conversation?

5 A. My recollection is in the  
6 first conversation he mentioned  
7 Trooper Stanton, who was subsequently  
8 arrested. Trooper Stanton --- and I  
9 don't recall how he described his  
10 role but, you know, I could  
11 characterize it as he described  
12 Trooper Stanton inserting himself as  
13 a facilitator of this activity or in  
14 some middleman role, for lack of  
15 better terms.

16 Q. Did he mention Commissioner  
17 Evanko, either by name or by rank?

18 A. I can't recall whether Colonel  
19 Evanko's name was mentioned  
20 specifically. I do --- it is my  
21 recollection that we did discuss  
22 ranks or at least positions in the  
23 agency.

24 Q. What was that discussion?

25 A. Well, the heart and soul of

1 the conversation, as I recollect, was  
2 that, as I've just described, there  
3 was an individual who believed that  
4 it were possible to gain entry into  
5 the State Police Academy. And I do  
6 recall Agent Kush saying that they  
7 were looking for someone in the state  
8 police who could provide them with  
9 some resource information in order to  
10 further and continue this  
11 investigation of public corruption  
12 and ---.

13 Q. Is that what they wanted you  
14 for?

15 ATTORNEY BAILEY:

16 He was not completed  
17 with his response. Please,  
18 let him finish. Go ahead.

19 A. Agent Kush said they needed a  
20 contact who could supply information,  
21 such as when the cadet classes start,  
22 exactly what the process is and how  
23 the hiring process works and what  
24 have you.

25 BY ATTORNEY GUIDO:

1 Q. And my question was, is that  
2 what your role was going to be?

3 A. Apparently.

4 Q. I mean, that's why he was  
5 contacting you in order to obtain  
6 that kind of information?

7 ATTORNEY BAILEY:

8 Objection. You can  
9 respond if you know what was  
10 in his mind.

11 BY ATTORNEY GUIDO:

12 Q. What did he tell you about why  
13 he was calling you?

14 A. That's what I just described.

15 Q. Right. So that's why he was  
16 calling you; right? I mean, it's not  
17 that difficult.

18 A. Actually, I think it is. I'm  
19 not sure why he called me.

20 Q. Okay.

21 ATTORNEY BAILEY

22 All right. I object.

23 A. I picked up the phone or I had  
24 this conversation and he's on the  
25 other end.

1 BY ATTORNEY GUIDO:

2 Q. And he didn't tell you why he  
3 was calling you?

4 ATTORNEY BAILEY:

5 If you understand, you  
6 can respond. Go ahead. I  
7 object. I've put an objection  
8 on the record, but you can go  
9 ahead and respond.

10 A. I don't believe I do. I think  
11 the why part was to report this  
12 activity. I think you're asking me  
13 why did he pick me out of the phone  
14 book, I don't know.

15 BY ATTORNEY GUIDO:

16 Q. No, I'm not asking you why he  
17 picked you out of the phone book.  
18 I'll ask you about that later. What  
19 I'm asking you right now is, when he  
20 spoke to you on the phone, did he say  
21 if he was calling you to get  
22 information or just to give  
23 information to you?

24 A. I don't know that those words  
25 were specifically discussed. I think

1 I've answered that. That's what I  
2 recall from our conversation.

3 Q. Did he ask you for any  
4 information?

5 A. On the first phone call, I'm  
6 not sure. Because even if he had, I  
7 don't know if I could have provided  
8 any. I don't know. I don't recall.

9 Q. Did he ask your opinion about  
10 whether or not it was possible for  
11 someone to bribe their way into the  
12 State Police Academy?

13 A. We talked about the potential  
14 of such an allegation, yes.

15 Q. What do you remember about  
16 that portion of the discussion?

17 A. I remember, again, I'm trying  
18 to recall from three years ago  
19 exactly what was said. But I recall  
20 that during the conversation, I think  
21 we essentially did what I did when I  
22 was assigned to internal affairs,  
23 which is what we call threshold  
24 testing. We had some general  
25 discussion about, well, if it were

1 true, okay, how would this work or  
2 could it work or are there any  
3 weaknesses in the agency where this  
4 could happen or outside of the  
5 agency. I recall some general  
6 discussion.

7 Q. Did you make any suggestions  
8 to him about how it could have  
9 happened?

10 A. I could have. I don't  
11 remember.

12 Q. Okay. Do you remember whether  
13 Coury, Westcott --- well, was Coury  
14 mentioned during this conversation?

15 A. I don't recall.

16 Q. How about Lieutenant Colonel  
17 Westcott?

18 A. I don't recall.

19 Q. Lieutenant Colonel Hickes?

20 BRIEF INTERRUPTION

21 ATTORNEY BAILEY:

22 Hickes, by the way, is  
23 H-I-C-K-E-S.

24 BY ATTORNEY GUIDO:

25 Q. Major Conley, was he

1 discussed?

2 A. Not that I can recall, no.

3 Q. Was a State Representative  
4 mentioned?

5 A. In the first phone call, I  
6 don't believe. Do you mean by name?

7 Q. Either, name or by as a State  
8 Representative.

9 A. Okay. In general terms, it  
10 could have been. Again, I don't  
11 recall. I believe that was the  
12 issue. There was a belief on their  
13 part that this could happen through  
14 political influence of some type.

15 Q. Was the allegation basically  
16 that, as best you recall, that a  
17 state trooper and some political  
18 figure were possibly working in  
19 cahoots to get people into the State  
20 Police Academy? Is that essentially  
21 right?

22 A. Well, on the first phone call,  
23 I'm not sure it was that mature yet.  
24 As I recall that conversation with  
25 Agent Kush, it was that they at least

1 had a subject who believed that and  
2 they already had a state trooper  
3 acting in the role of facilitator. I  
4 don't recall from the first  
5 conversation that it had matured to  
6 the point where there had actually  
7 been contact with any state reps or  
8 senators or what have you. But that  
9 was, as I recall, what, at least the  
10 participants believed could happen.

11 Q. Okay. At the time that you  
12 reported the matter to Lieutenant  
13 Colonel Hickes, had you had more than  
14 that first phone call with Special  
15 Agent Kush?

16 A. Not that I can recall.

17 Q. So you had the first phone  
18 call and then you told Lieutenant  
19 Colonel Hickes about it?

20 A. That's what I recall, yes.

21 Q. Did you tell him that right  
22 away?

23 A. I don't know what you mean,  
24 right away.

25 Q. In other words, you get off

1 the phone with Agent Kush, how long a  
2 period of time would have elapsed  
3 before you went and told Lieutenant  
4 Colonel Hickes about it?

5 ATTORNEY BAILEY:

6 How much time did  
7 elapse between?

8 ATTORNEY GUIDO:

9 Yes.

10 A. Well, I don't recall it being  
11 more than a few days, but I don't  
12 remember. Let me try it this way,  
13 Ms. Guido. I took this to be a very  
14 serious conversation. The FBI did  
15 not contact Trooper Stanton's  
16 commanding officer. They didn't  
17 contact his area commander. They  
18 didn't contact the director of  
19 personnel, at least they told me they  
20 didn't. There's no indication that  
21 anybody had been contacted. They  
22 didn't contact Colonel Evanko or any  
23 of the other colonels. He called me.  
24 And I took this very seriously. I  
25 had been in internal affairs by then

1 long enough to understand what I have  
2 described as threshold testing, which  
3 we used to employ for assignment,  
4 which is believing allegations on  
5 their face, if they were true, what  
6 would the next logical step be.

7 So I recall taking some time.  
8 Because the mere fact that a state  
9 trooper was already implicated in  
10 this kind of activity concerned me a  
11 great deal. Understanding, at least  
12 in generic terms, from Agent Kush  
13 that there was another political  
14 investigation ongoing, which I  
15 believe we ultimately came to know as  
16 the Gigliotti (phonetic)  
17 investigation. I took all this very  
18 seriously, so I did take some time to  
19 try to clear my head and understand  
20 what would be the next logical thing  
21 for me to do.

22 ATTORNEY BAILEY:

23 Before we continue, so  
24 the record's clear. Mr.  
25 Brown, what role is Mr. Brown?

1 ATTORNEY GUIDO:

2 He's our investigator.

3 ATTORNEY BAILEY:

4 He's your investigator.

5 What's he doing in the  
6 deposition here?

7 ATTORNEY GUIDO:

8 He's helping us with  
9 the documents, et cetera.

10 ATTORNEY BAILEY:

11 Well, I'm not going to  
12 --- I don't think he has a  
13 right to be here, but I'm not  
14 going to object to his being  
15 here. I do want to bring to  
16 your attention and I am going  
17 to subpoena --- I notice that  
18 he's making --- he's got some  
19 document, making notes from  
20 testimony of Mr. Ober. And I  
21 fully expect that --- I want  
22 to see those.

23 ATTORNEY GUIDO:

24 Well, we'll object to  
25 it. We can argue about it to

1 the Judge.

2 ATTORNEY BAILEY:

3 Well, we will. But I'm  
4 going to, you know, I don't  
5 think he has any ---.

6 ATTORNEY GUIDO:

7 He's assigned to work  
8 with Counsel.

9 ATTORNEY BAILEY:

10 I don't think he has  
11 any --- well, I have no  
12 evidence of that. It's not  
13 been presented to me.

14 ATTORNEY GUIDO:

15 Well, I'm just telling  
16 you.

17 ATTORNEY BAILEY:

18 Well, I'm going to ---.

19 ATTORNEY GUIDO:

20 In any event, we can  
21 argue about that later.

22 ATTORNEY BAILEY:

23 I'm going to let him  
24 --- see, I haven't finished my  
25 sentence yet. And I'm not

1 going to object, with the  
2 understanding that, as your  
3 investigator, I want to have  
4 access to what he's doing  
5 sitting in here in a  
6 deposition and taking notes.

7 ATTORNEY GUIDO:

8 Well, as I said, we can  
9 argue about that later with  
10 the Court, about whether or  
11 not you can see his notes.  
12 But for purposes of now, let's  
13 go on to --- I did have one  
14 question.

15 ATTORNEY BAILEY:

16 The objection is noted.  
17 Okay. You can go on.

18 BY ATTORNEY GUIDO:

19 Q. You were talking about the  
20 internal affairs --- you made me  
21 think about it, the confidentiality  
22 aspect. Internal Affairs  
23 investigations are confidential?

24 A. Yes.

25 Q. And are they confidential to

1 other people in the Internal Affairs  
2 Division? In other words, can one  
3 internal affairs investigator talk  
4 over a case with his colleagues,  
5 bounce ideas off them, that kind of  
6 thing?

7 A. Well, I suppose that could  
8 occur. I'm not real sure what the  
9 question is.

10 Q. Okay. If I could put it in a  
11 way that would phrase it better. You  
12 know, as a lawyer sometimes if you  
13 have a case and you're dealing with  
14 it and you're thinking, okay, here's  
15 the facts, what should I do.  
16 Sometimes it helps to go down the  
17 hall and talk to one of your  
18 colleagues and say, now, here's the  
19 facts, you know, what would you do in  
20 this situation, kind of thing. Are  
21 internal affairs investigators  
22 allowed to do that with their  
23 internal affairs colleagues, as  
24 opposed to people outside the  
25 division? Could one investigator

1 who's assigned a case go to another  
2 investigator and say, look, here are  
3 the facts of what I'm dealing with,  
4 you know, do you have any ideas about  
5 how I could handle this, et cetera?

6 ATTORNEY BAILEY:

7 Objection to the form  
8 of the question. You may  
9 respond.

10 A. I don't know that there's any  
11 prohibition that that can't occur.  
12 But I am also probably sure that  
13 there are times when information  
14 isn't shared.

15 BY ATTORNEY GUIDO:

16 Q. Isn't?

17 A. Isn't, but ---.

18 Q. I just was wondering because I  
19 know that confidentially, you  
20 couldn't go and talk to somebody, I  
21 guess, out in the field about it;  
22 right? I'm just trying to understand  
23 what the confidentiality is  
24 surrounding any particular case.

25 A. Well, do you want to know what

1 really happens? There isn't too much  
2 that's confidential. If you want to  
3 know something, all you have to do is  
4 ask somebody.

5 Q. All right. Theoretically,  
6 under the rules, what would the  
7 confidentiality be?

8 A. Well, this is not, I don't  
9 believe a difficult issue. As with  
10 any investigation, there's a need to  
11 know, I suppose may be an accurate  
12 way to phrase that, and a want to  
13 know determination made on discussing  
14 cases.

15 Q. Now, in paragraph 24, you  
16 state, the FBI indicated that a  
17 reliable confidential informant had  
18 reported that members of the  
19 Governor's office and high-ranking  
20 members of the PSP might be involved  
21 in accepting payoffs in return for  
22 special consideration for certain  
23 applicants on the PSP cadet  
24 eligibility list. Did Agent Kush  
25 tell you that during your first

1 conversation?

2 A. In our first conversation, as  
3 I believe I've testified, there was a  
4 general discussion between the two of  
5 us about, well, if this were true,  
6 you know, what positions or how could  
7 something like this happen. I  
8 believe and this is, again, just what  
9 I'm trying to recall, I believe that  
10 conversation was focused around  
11 trying to frame up, trying to  
12 establish the boundaries of where  
13 something like this could or couldn't  
14 go.

15 Q. Did Agent Kush suggest that  
16 someone in the Governor's office and  
17 high-ranking members of PSP might be  
18 involved or did you suggest that that  
19 might be the case?

20 A. Oh, I think that was an issue  
21 that we jointly discussed. I think  
22 my recollection is that when we  
23 discussed, well, what if someone were  
24 to try to influence a legislator,  
25 that in and of itself would not

1 produce the desired result. You have  
2 to do something with that. There  
3 would need to be another action,  
4 where would that person then go or,  
5 again --- this conversation, to my  
6 recollection, is a conversation, to  
7 use your words, that two  
8 investigators might have in  
9 discussing possibilities and bouncing  
10 ideas.

11 Q. Right.

12 A. That's all I recall.

13 Q. And one investigator would  
14 have to come up with the idea first.  
15 So I'm just wondering if you remember  
16 whose idea it was --- who first had  
17 the idea that somebody from the  
18 governor's office might have to be  
19 involved?

20 A. I don't remember that.

21 Q. Now, in paragraph 25 you say,  
22 the FBI expressly and clearly  
23 requested that Darrell not divulge  
24 this information to potential  
25 investigative targets, including top

1 PSP officials. When you say the FBI,  
2 are you talking about Special Agent  
3 Kush?

4 A. During my conversation with  
5 Agent Kush, yes.

6 Q. What did he say exactly?

7 A. Oh, I don't remember what was  
8 exactly said. Again, in ---.

9 Q. Well, you said expressly and  
10 clearly.

11 A. When we had our discussion,  
12 there was no question during that  
13 discussion that because of the  
14 unknown in this investigation that  
15 this was a very sensitive matter,  
16 that discretion and confidentiality  
17 would be necessary in order to  
18 conduct it. And what I heard, my  
19 perception of our discussion, what I  
20 heard and what I was reacting to, was  
21 the notion that the FBI running a  
22 political investigation, however many  
23 investigations or however this thing  
24 developed, called the director of the  
25 internal affairs division for support

1 resource. And quite honestly, it  
2 never occurred to me that this  
3 wouldn't be a matter that great  
4 confidence and care should be  
5 exercised and to manage to its  
6 successful outcome.

7 ATTORNEY BAILEY:

8 Let me place an  
9 objection at this point on the  
10 record so I don't interrupt  
11 any of your questioning. I  
12 want to make it very, very  
13 clear that there's a relevancy  
14 objection at this point to any  
15 of these questions, that they  
16 have nothing to do with the  
17 Complaint, the cause of action  
18 or any of the material facts  
19 related to the case.

20 ATTORNEY GUIDO:

21 Okay.

22 ATTORNEY BAILEY:

23 Thank you very much.

24 BY ATTORNEY GUIDO:

25 Q. Did the FBI, did Special Agent

1 Kush expressly and clearly tell you  
2 not to divulge the information to  
3 potential investigative targets?

4 A. I believe I've answered that.

5 Q. No, you didn't. You told me  
6 that your recollection was that you  
7 got the idea that it was  
8 confidential. It never occurred to  
9 you that it wasn't confidential.  
10 What I want to know is, did Special  
11 Agent Kush expressly tell you, do not  
12 repeat this information, do not  
13 divulge this information to potential  
14 investigative targets?

15 A. When we discussed this  
16 investigation, the need for  
17 confidentiality and sensitivity and  
18 discretion or whatever you want to  
19 describe it, was discussed. And it  
20 was jointly agreed or I don't know  
21 --- I can't recall who said what.  
22 But I can tell you that --- I'm not  
23 sure what's the Webster definition of  
24 expressly and clearly, but it was  
25 express and clear in my mind that he

1 was telling me that in the form and  
2 content and context of this  
3 conversation, the fact that this is a  
4 matter of great confidence.

5 ATTORNEY BAILEY:

6 Is your question that  
7 he used that word or that  
8 verbiage? Because I think  
9 he's answered it also. But  
10 you go ahead and continue to  
11 answer it. But I ---.

12 A. I don't know how many other  
13 ways to answer it.

14 ATTORNEY BAILEY:

15 Well, that's all right.  
16 We'll keep doing that, but I  
17 ---.

18 BY ATTORNEY GUIDO:

19 Q. Well, you say --- there's a  
20 difference between whether or not you  
21 intuitively understand that you  
22 shouldn't --- that they don't want  
23 you to tell someone else.

24 ATTORNEY BAILEY:

25 All right.

1 ATTORNEY GUIDO:

2 I'm trying to explain  
3 my question.

4 BY ATTORNEY GUIDO:

5 Q. And somebody saying to you,  
6 I'm telling you not to divulge this  
7 information to anyone else. Do you  
8 remember whether or not he  
9 specifically told you, don't tell  
10 this to investigative ---?

11 ATTORNEY BAILEY:

12 Let me place an  
13 objection on the record. It's  
14 been asked and answered at  
15 least two times. One last  
16 time, you go ahead and answer  
17 the question. And I will ---.

18 ATTORNEY GUIDO:

19 Your objection's noted.  
20 But I'd like an answer, an  
21 answer to the question ---

22 ATTORNEY BAILEY:

23 Ma'am, move to ---.

24 BY ATTORNEY GUIDO:

25 Q. --- which is, did he tell you

1 or did he not tell you? Do you  
2 remember?

3 ATTORNEY BAILEY:

4 Darrell, just wait a  
5 minute. She interrupted when  
6 I was talking. Move to  
7 strike. Darrell, my  
8 instructions to you are to  
9 answer once more. Okay. And  
10 then if the question comes on  
11 again, I'm simply going to  
12 instruct you not to answer  
13 again. As you understand the  
14 question, if she wants to  
15 rephrase it, repeat it, please  
16 feel free. Go ahead and  
17 answer one more time and  
18 that's it.

19 BY ATTORNEY GUIDO:

20 Q. I'll rephrase the question. I  
21 don't think it's a difficult one.  
22 Did he specifically tell you, do not  
23 divulge this information to a  
24 potential target?

25 ATTORNEY BAILEY:

1                   Objection, asked and  
2                   answered. Same objection. Go  
3                   ahead and answer one more  
4                   time.

5       A.           That's my recollection,  
6       Ms. Guido. But I didn't see myself  
7       in a subordinate role to this man. So  
8       that's the --- I'm trying to be  
9       as ---

10      BY ATTORNEY GUIDO:

11      Q.           I understand.

12      A.           --- accurate as I can to my  
13      response. I don't ---.

14      Q.           Did you discuss who was ---  
15      I'm sorry.

16      A.           Well, I don't recall this  
17      being a situation where he was  
18      lording over me by long distance  
19      saying you shall do this and not  
20      this. What I recall is what I have  
21      described to you. I had a clear  
22      understanding of what was discussed  
23      and the need for great discretion and  
24      confidentiality. He certainly never  
25      said, I'm calling the director of

1 internal affairs and I don't give a  
2 rat's behind what you do with the  
3 info.

4 Q. Did you clarify with him what,  
5 you know, you weren't supposed to  
6 tell potential investigative targets,  
7 did you clarify with him who  
8 potential investigative targets were?

9 A. Well, in the context of what  
10 I've described, I think that would  
11 have been the byproduct of that. In  
12 other words, we discussed what I've  
13 termed as threshold testing. And if  
14 this were true, what positions in the  
15 agency or out of the agency could be  
16 involved in something like this. If  
17 you want to phrase them as potential  
18 targets, I didn't.

19 Q. Did you make an effort to  
20 clarify whether it was something that  
21 you would be able to tell Major  
22 Conley?

23 A. No.

24 Q. Did you make an effort to  
25 clarify whether it was something that

1 you would be able to tell Lieutenant  
2 Colonel Coury?

3 A. No.

4 Q. How about Colonel Evanko?

5 A. Not that I can recall, I ---.

6 Q. How about, did you clarify  
7 whether or not you could tell his  
8 station troop commander, Stanton?

9 A. I don't recall any of that  
10 discussion.

11 Q. You didn't talk to him about  
12 whether you could talk to the area  
13 commander?

14 A. I don't have any recollection  
15 of that, ma'am.

16 Q. Returning to paragraph 25,  
17 you say there is no PSP policy or  
18 regulation to guide a member on how  
19 to conduct or report on an  
20 investigation into alleged criminal  
21 or other misconduct by a high-ranking  
22 PSP official, such as commissioner or  
23 deputy commissioner. For purposes of  
24 internal affairs, don't the  
25 commissioner and the deputy get

1 treated like everybody else?

2 A. I would certainly hope so.

3 Q. So when you say there's  
4 nothing to guide you on how to report  
5 or conduct an investigation into  
6 misconduct by the commissioner or his  
7 deputies, the AR 4-25 that governs  
8 internal affairs, wouldn't it apply  
9 to them just as well?

10 A. I think I'm living proof of  
11 what happens when you treat them like  
12 everyone else, ma'am.

13 Q. But wouldn't that apply ---  
14 don't the same rules apply to them?

15 A. I think what the intent of  
16 that section or sentence is, ma'am,  
17 that the AR 4-25 has a great deal of  
18 specificity with respect to lower or  
19 subordinate ranks. In the situation  
20 that we're describing, those  
21 reporting requirements and I'm  
22 hesitant to call them, chain of  
23 command requirements, but the  
24 reporting requirements don't  
25 specifically address how that's to be

1 handled, should those ranks or those  
2 positions be implicated in wondering.

3 ATTORNEY BAILEY:

4 All right. Hold it for  
5 one second.

6 BRIEF INTERRUPTION

7 BY ATTORNEY GUIDO:

8 Q. While you were in internal  
9 affairs, did you have other  
10 complaints against Colonel Evanko or  
11 his deputies?

12 A. I recall --- yes, I think we  
13 did get a complaint. I believe it  
14 might have been against Colonel  
15 Westcott. I'm not certain now.

16 Q. Well, do you recall receiving  
17 a complaint against Lieutenant  
18 Colonel Westcott in September 1998,  
19 involving an anonymous letter  
20 received by Colonel Evanko?

21 A. No. If you can help me, I  
22 don't recall.

23 ATTORNEY BAILEY:

24 While we are doing  
25 this, Mr. Brown is helping

1           you.    Could we have him  
2           identify himself for the  
3           record, state his position and  
4           title, please?

5                   MR. BROWN:

6                   Captain John R. Brown,  
7           director of internal affairs  
8           for the state police.

9                   ATTORNEY BAILEY:

10                  Are you the  
11         investigator on the Ober case?

12                   MR. BROWN:

13                  Yes.

14                   ATTORNEY BAILEY:

15                  Okay.

16                   ATTORNEY GUIDO:

17                  Just while we're on the  
18         record, we're clarifying that  
19         you're assigned as an attorney  
20         work product; correct?

21                   MR. BROWN:

22                  That's correct.

23                   ATTORNEY GUIDO:

24                  We're going to have to  
25         get ---

1 ATTORNEY BAILEY:

2 Copies?

3 ATTORNEY GUIDO:

4 --- copies made,  
5 because I ---.

6 ATTORNEY BAILEY:

7 Well, why don't we  
8 suspend for a while. I could  
9 call my office anyway. You  
10 have a phone down here; don't  
11 you?

12 ATTORNEY GUIDO:

13 Sure do. Actually  
14 there's one over there. Let's  
15 take a five-minute break.

16 MS. LYDE:

17 10:27 a.m., take a  
18 short break.

19 SHORT BREAK TAKEN

20 MS. LYDE:

21 10:37 a.m., back on the  
22 record.

23 ATTORNEY BAILEY:

24 10:37 a.m., back on the  
25 record. Okay. Thank you.

1 BY ATTORNEY GUIDO:

2 Q. Captain, if you'll take a look  
3 at Exhibit Five. That's a desk  
4 memorandum.

5 (Deposition  
6 Exhibit Number Five  
7 marked for  
8 identification.)

9 BY ATTORNEY GUIDO:

10 Q. Do you recognize your own  
11 handwriting at the bottom of it?

12 A. Yes.

13 Q. And did you have a chance yet  
14 to look over ---?

15 ATTORNEY BAILEY:

16 Do you have a copy for  
17 me, Counsel?

18 ATTORNEY GUIDO:

19 He has it. Sorry. I  
20 have the original there.

21 ATTORNEY BAILEY:

22 Thank you.

23 BY ATTORNEY GUIDO:

24 Q. Did you have a chance to look  
25 over it?

113

1 A. I think I got the gist of it.  
2 To tell you the truth, I haven't  
3 studied it, but I think I'm getting  
4 the gist of it.

5 Q. Is that a complaint that came  
6 into internal affairs ---

7 A. Yes.

8 Q. --- through the commissioner  
9 and involved Deputy Commissioner  
10 Westcott; correct?

11 A. It came --- the routing slip  
12 is from the commissioner to deputy of  
13 admin, ultimately to the director of  
14 BPR, yes.

15 Q. Who would the deputy of  
16 administration be then?

17 A. Colonel Coury.

18 Q. Okay. So it came from the  
19 commissioner to Coury to you?

20 A. Yes, apparently.

21 Q. And is there a date on that?

22 A. Yes, September 14th, '98.

23 Q. So this is right around the  
24 same time frame that you received the  
25 information from the FBI?

1 A. Yes.

2 ATTORNEY BAILEY:

3 Is this Lieutenant  
4 Brown, is this the same man  
5 here?

6 ATTORNEY GUIDO:

7 Yes.

8 BY ATTORNEY GUIDO:

9 Q. You had assigned that  
10 investigation to Lieutenant Brown?

11 A. Yes.

12 Q. And the notation on there,  
13 does it say how that was supposed to  
14 be handled?

15 A. It says, Tom, handle as you  
16 normally would, Colonel Evanko.

17 Q. And then if you look at  
18 Exhibit Six.

19 (Deposition Exhibit  
20 Number Six marked for  
21 identification.)

22 BY ATTORNEY GUIDO:

23 Q. Can you tell me what this  
24 document is?

25 A. This is a use --- Exhibit Six

1 is a use of force or complaint,  
2 reception and processing worksheet,  
3 indicating a complaint is anonymous.  
4 It's for BPR control number IAD-  
5 10855.

6 Q. And what's that form used for?

7 A. This is the recording document  
8 that's used when complaints are made.

9 Q. Is it the initial document?

10 A. Yes. It's for complaints made  
11 against the department of personnel.

12 Q. Is that the standard document  
13 that would be used if any other  
14 member of the state police was the  
15 subject of an investigation?

16 A. Yes.

17 Q. And did you say if there was a  
18 date on that document?

19 A. I believe I did. But it was,  
20 it says date received, 9/14/98.

21 Q. And I see that it says a date  
22 assigned. Is there a date that the  
23 case was assigned?

24 A. Yes, 9/16/98.

25 Q. So the form gets filled out,

1 was filled out relatively close in  
2 time? In other words, it's like two  
3 days after you get it? After it  
4 comes in, it got assigned a case  
5 number?

6 A. Yes. Apparently, yes.

7 Q. And then an investigator was  
8 assigned?

9 A. Yes.

10 Q. Which goes back to my original  
11 point that the commissioner and his  
12 deputies, for purposes of internal  
13 affairs complaints, should be treated  
14 like everyone else; correct?

15 A. I would hope so.

16 Q. Okay. Now, paragraph 26 of  
17 your Complaint --- you can just hand  
18 those down to the Court Reporter. It  
19 says, since Ober was chosen by the  
20 ---.

21 A. That previous document you  
22 just showed me, that went directly to  
23 the commissioner's office, I note; is  
24 that correct?

25 Q. I believe so. If you want to

1 look at it again, you can.

2 A. This is a complaint that was  
3 made - - - .

4 ATTORNEY BAILEY:

5 Make reference to the  
6 exhibit number.

7 A. Exhibit Number Five is an  
8 unsigned anonymous letter that was  
9 sent directly to the commissioner,  
10 apparently. Routed through the  
11 deputy commissioner of administration  
12 and then is ultimately routed down to  
13 or through the Bureau of Professional  
14 Responsibility for assignment.

15 BY ATTORNEY GUIDO:

16 Q. And the commissioner's  
17 direction on there was to treat him  
18 like everybody else or like every  
19 other one; is that right?

20 A. His direction is, handle as  
21 you normally would.

22 Q. Okay.

23 ATTORNEY BAILEY:

24 Now, to clarify this,  
25 because she's asked you a

1 question, I don't think this  
2 was clear. Lieutenant Brown,  
3 see me. I would like you to  
4 handle this investigation.  
5 Whose words are those?

6 A. Those are mine.

7 ATTORNEY BAILEY:

8 Okay.

9 BY ATTORNEY GUIDO:

10 Q. Now, paragraph 26 of your  
11 Complaint, since Ober was chosen by  
12 the FBI as a contact, obviously  
13 because he was not a target, or  
14 potential target of the  
15 investigation, that portion there, is  
16 that your assumption that you were  
17 chosen because you were not a target  
18 or were you told that you were chosen  
19 because you were not a target?

20 A. I don't remember being told  
21 that I wasn't a target. I knew I  
22 didn't do it, so I guess --- I don't  
23 remember that part of the  
24 conversation, no.

25 Q. I think you said this, but if

1 you didn't, correct me. Did you say  
2 that you weren't really sure why they  
3 chose you, that they didn't really  
4 tell you? Agent Kush didn't tell you  
5 why he called you?

6 A. No. No, he didn't.

7 Q. Okay. And next in that  
8 paragraph you state that you felt it  
9 was important that you limit your  
10 reporting of the information to  
11 someone that you were personally  
12 certain would not be involved in an  
13 unlawful matter and to whom no  
14 conflict would present itself, but at  
15 the same time, be someone who was,  
16 hopefully, a superior in your chain  
17 of command. At that time when the  
18 FBI contacted you, who was in your  
19 chain of command?

20 A. My direct chain of command  
21 would have been during the time I was  
22 the acting bureau director, my direct  
23 chain would have been Colonel Coury  
24 and then Colonel Evanko.

25 Q. Well, who was your immediate

1 supervisor?

2 A. At that time, I was the acting  
3 bureau director. I would have been  
4 supervised by the deputy commissioner  
5 of administration.

6 Q. On the date ---.

7 ATTORNEY BAILEY:

8 Who was?

9 A. Colonel Coury.

10 ATTORNEY BAILEY:

11 Colonel Coury.

12 BY ATTORNEY GUIDO:

13 Q. As of the date that you told  
14 Colonel Hickes about this, who was  
15 your immediate supervisor as of then?

16 A. Major Conley.

17 Q. Okay. And you did not report  
18 the matter to Major Conley; right?

19 A. Correct.

20 Q. Or to Lieutenant Colonel  
21 Coury?

22 A. Correct.

23 Q. Or to Colonel Evanko,  
24 obviously?

25 A. Correct.

1 Q. And you had said that you  
2 wanted to report it to someone you  
3 were personally certain would not be  
4 involved in an unlawful matter. So  
5 of the people in your direct chain of  
6 command, Major Conley, Lieutenant  
7 Colonel Coury, Colonel Evanko, none  
8 of those people were people that you  
9 could be personally certain wouldn't  
10 be involved in an unlawful activity;  
11 is that right?

12 ATTORNEY BAILEY:

13 I'm going to object to  
14 the form of the question, but  
15 you can go ahead and respond.

16 A. Well, I think what the  
17 statement represents to me is, my  
18 personal knowledge of Colonel Hickes'  
19 background and experience and the  
20 fact that he, by the process of  
21 elimination, was not a potential  
22 target. That's more what the  
23 statement means to me.

24 ATTORNEY BAILEY:

25 In other words, that's

1           what you mean by the  
2           statement?

3       A.       Yes. It is not as though I  
4       didn't personally know who Colonel  
5       Hickes was or what his background  
6       was. I think that's what I took that  
7       to mean.

8       BY ATTORNEY GUIDO:

9       Q.       How well did you know Colonel  
10      Hickes at that time?

11     A.       Personally?

12     Q.       Yes.

13     A.       Not well.

14     Q.       Did you have much professional  
15      contact with him at that time?

16     A.       No.

17     Q.       Essentially, how did you know  
18      him?

19     A.       Most of my exposure to Colonel  
20      Hickes was through when he was the  
21      director of BPR and as the deputy  
22      commissioner of operations when I was  
23      assigned to the Bureau of Research  
24      and Development. He might have been  
25      an officer in Troop G when I was

1 stationed there, but I don't recall  
2 that for sure. But I worked with him  
3 on a variety of assignments when I  
4 was in R&D.

5 Q. Why did you feel that  
6 Lieutenant Colonel Hickes was someone  
7 you could trust and not your own  
8 immediate supervisor, Major Conley?

9 ATTORNEY BAILEY:

10 Objection to the form  
11 of the question. You may  
12 respond.

13 A. Well, I don't know that it so  
14 much was a matter of trust. It was a  
15 matter of what would be the  
16 appropriate thing to do or who would  
17 be the appropriate individual to  
18 report this to and to seek any  
19 guidance or advice or what have  
20 you. And the reason I thought  
21 Colonel Hickes made sense is, I  
22 think, for the reasons I've just  
23 described. He is the former director  
24 of the Bureau of Professional  
25 Responsibility and he's a former

1 deputy commissioner of operations.

2 At that time he was probably and  
3 maybe still remains one of the most  
4 credential officers in the entire  
5 state police organization.

6 BY ATTORNEY GUIDO:

7 Q. True. But wasn't Major Conley  
8 responsible for the entire Bureau of  
9 Professional Responsibility?

10 A. On December 5th --- excuse me.  
11 On September 5th, he was, correct.  
12 No disrespect to Major Conley.

13 Q. October 5th, I think we're  
14 talking about.

15 A. I'm sorry. October 5th.

16 Q. I don't want you to get  
17 screwed up in your dates. As of  
18 October 5th ---.

19 ATTORNEY BAILEY:

20 He was not done  
21 responding.

22 A. I just want --- I'm kind of  
23 new at this. I'm not sure how much I  
24 --- what you really want from me.  
25 But I feel like it needs said and

1 I'll say it and I said it before when  
2 I was interviewed at --- when I was  
3 interrogated before. But no  
4 disrespect to Major Conley. I didn't  
5 know him. The only conversations I  
6 believe I ever had with Major Conley  
7 were by telephone. He was just  
8 someone I didn't know.

9 BY ATTORNEY GUIDO:

10 Q. But as director of the bureau,  
11 wasn't he entitled to know what was  
12 going on in his own bureau?

13 ATTORNEY BAILEY:

14 Objection. You may  
15 respond.

16 A. With understanding at that  
17 first conversation with Agent Kush, I  
18 believe, if my memory serves me  
19 correctly, then Captain Conley would  
20 have been Trooper Stanton's  
21 commanding officer, someone that the  
22 FBI specifically didn't call. And I  
23 just extended that logic.

24 BY ATTORNEY GUIDO:

25 Q. Well, when you say

1 specifically didn't call, how do you  
2 know that it was done specifically,  
3 an intentional, I'm not going to call  
4 that person? And I think that seems  
5 to be the implication of what you're  
6 saying, that the FBI made a conscious  
7 decision not to call this man and  
8 ---.

9 A. I'm not implying anything,  
10 ma'am. I'm just saying he wasn't  
11 called.

12 Q. He wasn't called, but ---.

13 A. Or he wasn't notified.

14 Q. He wasn't notified. And from  
15 that, you're saying that you inferred  
16 that because he wasn't notified, that  
17 you shouldn't tell him?

18 A. I didn't feel I should ---.

19 ATTORNEY BAILEY:

20 I'm going to object to  
21 the form of that question, the  
22 leading nature of that  
23 question. Are you asking him  
24 if he was inferring something?  
25 Is that what it boils down to?

1 ATTORNEY GUIDO:

2 I think he just told me  
3 that. But you can repeat what  
4 you --- you can rephrase, re-  
5 tell me, whatever.

6 ATTORNEY BAILEY:

7 I think he said he  
8 didn't infer. But that's all  
9 right.

10 ATTORNEY GUIDO:

11 Well, I'm jumping back  
12 a couple questions.

13 ATTORNEY BAILEY:

14 Okay.

15 BY ATTORNEY GUIDO:

16 Q. When you said to me, in  
17 response to my question about why you  
18 didn't tell Major Conley, you said  
19 because he had been the station  
20 commander or whatever ---.

21 ATTORNEY BAILEY:

22 He was Stanton's  
23 commanding officer. That's  
24 what his response was.

25 BY ATTORNEY GUIDO:

1 Q. You had said that you didn't  
2 tell Major Conley because he had been  
3 Stanton's commanding officer and the  
4 FBI had not told him. Did you infer  
5 that they intentionally didn't tell  
6 him?

7 A. I don't think I inferred  
8 anything from this. I think we're  
9 losing sight of something. And I  
10 think what we're losing sight of,  
11 ma'am, is the FBI called me, as I've  
12 testified, and they were conducting  
13 this investigation. And I'm the  
14 recipient of this information,  
15 wherein this matter of public  
16 corruption has already touched the  
17 life of a state trooper. In that  
18 conversation that I had with the FBI,  
19 we conducted that threshold testing,  
20 because we recognized that it would  
21 not be sufficient to produce an  
22 outcome just to touch base with a,  
23 say a legislator, for example.

24 So in that conversation, there  
25 was a general discussion about, okay,

1     could this come from someone inside  
2     the organization? Could there be a  
3     point where the organization could be  
4     compromised? And my response, and I  
5     recall this, was, well, I don't know.  
6     I don't know exactly how the process  
7     works. I can guess and I think I can  
8     come fairly close. It could perhaps,  
9     this thing, this investigation could  
10    reach out to the testing company  
11    itself, the people that manage this  
12    information, potentially.

13           And it was also discussed  
14    that, well, there are key people in  
15    the organization, occupying key  
16    positions, that potentially have that  
17    ability. It was also discussed that  
18    that influence could come from  
19    outside of the organization to  
20    include the governor's office or  
21    high-ranking officials. I mean, this  
22    was --- in that first conversation,  
23    we just simply didn't know what the  
24    boundaries were. So there was some  
25    general discussion about those

1 things. The influence that it might  
2 take to produce the result that the  
3 individual was looking for, I  
4 thought, would be, my guess is that  
5 is not something easily accomplished  
6 and it might take an individual  
7 strategically placed, whether that be  
8 the governor's ---.

9 ATTORNEY BAILEY:

10 An individual  
11 strategically placed to  
12 provide access to the academy  
13 improperly?

14 A. Right. Either in the state  
15 police organization, the governor's  
16 office or what have you.

17 BY ATTORNEY GUIDO:

18 Q. I understood all that from  
19 your prior answers.

20 A. Okay.

21 Q. What I'm trying to understand  
22 is why, as director of the Bureau of  
23 Professional Responsibility, Major  
24 Conley was not entitled to know about  
25 information received by his own

1 director. That's what I would like  
2 to address.

3 ATTORNEY BAILEY:

4 Objection, asked and  
5 answered. You may respond  
6 again.

7 A. Well, one of the difficulties  
8 that I felt that I had, ma'am, was I  
9 wouldn't be in a position to give  
10 orders to a senior officer. So the  
11 officer that I chose, the individual  
12 that I chose to seek guidance and  
13 advice from, would have to be someone  
14 that I at least had some way of  
15 measuring them, know something about  
16 them. Yes, Major Conley was the  
17 director of BPR. But I don't believe  
18 my first encounter with Major Conley  
19 occurred until sometime in the middle  
20 of October.

21 BY ATTORNEY GUIDO:

22 Q. Unfortunately, it's really not  
23 all that uncommon for internal  
24 affairs to get complaints about  
25 possible illegal activity by state

1       troopers; is it?

2       A.           Not uncommon, no.   Sadly, I  
3       guess.

4       Q.           Right.   It's unfortunate, but  
5       that's a lot of what IAD  
6       investigates?

7       A.           I reluctantly agree with you,  
8       ma'am.

9       Q.           Okay.   Because, you know, you  
10      said that this matter was, you felt  
11      it should be treated somewhat  
12      differently because it had already  
13      touched the life of at least one  
14      state trooper, Trooper Stanton?

15      A.           Yes.

16      Q.           Now, as director of the  
17      internal affairs division, if one of  
18      your subordinates in internal affairs  
19      had received that phone call, would  
20      you have expected him to let you know  
21      what was going on?

22      A.           No.

23      Q.           You would not have expected  
24      him to let you know?

25      A.           Could you give me that

1 question one more time?

2 Q. If rather than calling ---.

3 A. If a subordinate of mine  
4 received information ---.

5 Q. If rather than calling you,  
6 Agent Kush had called one of your  
7 subordinates, one of the, just  
8 investigators in internal affairs.

9 A. Oh, okay.

10 Q. Would you think that that  
11 investigator had a responsibility to  
12 let you, the director of internal  
13 affairs, know that he had received  
14 this information?

15 A. And this is a hypothetical?

16 Q. Yes.

17 A. Well, I guess I would expect  
18 that internal affairs investigator to  
19 be guided by his best judgment and  
20 his discretion. I can certainly  
21 understand why he wouldn't. If we're  
22 attempting to recreate the  
23 environment that I found myself in, I  
24 can certainly understand why he  
25 wouldn't.

1 Q. Okay.

2 A. But if the question --- I  
3 thought your question was, if an  
4 internal affairs investigator were  
5 implicated in wrongdoing, would they  
6 report that to me.

7 Q. No. I think you answered my  
8 question. Paragraph 27, you said,  
9 consequently, Captain Ober reported  
10 the matter, as related by the FBI, to  
11 Lieutenant Colonel Robert C. Hickes,  
12 newly appointed deputy commissioner  
13 of staff. Captain Ober was confident  
14 that Colonel Hickes was of impeccable  
15 character, and knew, because of his  
16 position, that Hickes could not be  
17 involved. I just want to make sure I  
18 understand what that allegation is.  
19 Is the statement that you knew  
20 Colonel Hickes couldn't be involved  
21 because he was of impeccable  
22 character or because of the position  
23 he held or because of both?

24 ATTORNEY BAILEY:

25 Objection, asked and

1           answered.    You may respond.

2       A.           Yes, I believe it's both.   He  
3       was not, as the director of liquor  
4       control enforcement when this  
5       allegation surfaced, or at least at  
6       that time, he wouldn't have been in a  
7       position to be a potential target of  
8       this investigation.

9       BY ATTORNEY GUIDO:

10      Q.          Did you discuss with Agent  
11      Kush about when he had first opened  
12      his investigation into this political  
13      corruption?

14      A.          Not at that time, no.

15      Q.          Did you at anytime?

16      A.          Yes.

17      Q.          How long had the investigation  
18      been going on?

19      A.          Subsequent to --- subsequent  
20      to May of 1999, I come to find from  
21      Agent Kush --- no, excuse me, that's  
22      not correct.   What was your question  
23      again?   Let me try this again.

24      Q.          My question was, did you ever  
25      learn how long the FBI had that

1 investigation going on?

2 A. Yes. Yes, I did. I believe  
3 there was discussion about that issue  
4 later that month, later in October,  
5 when I met with the agents. I became  
6 aware of this, but I can't tell you  
7 exactly when. I think that's  
8 correct.

9 Q. Now, you said that Lieutenant  
10 Colonel Hickes, you felt that he  
11 could not have been involved because  
12 of his position. Lieutenant Colonel  
13 Hickes had also been a deputy  
14 commissioner during the Casey  
15 administration; correct?

16 A. Correct.

17 Q. And that was when Colonel Walp  
18 was the commissioner; am I right?

19 A. Yes. Correct.

20 Q. And at one point, wasn't  
21 Lieutenant Colonel Hickes a major in  
22 charge of the Bureau of Professional  
23 Responsibility?

24 A. I believe so.

25 Q. At one point he was also the

1 major in charge of the Bureau of  
2 Training and Education; is that  
3 right?

4 A. I don't know.

5 Q. You don't know? Assuming for  
6 the sake of argument, just at the  
7 moment, that he was, what does the  
8 major --- is the major that's in  
9 charge of the Bureau of Training and  
10 Education responsible for the State  
11 Police Academy?

12 A. I believe that's generally  
13 true, yes. Do you mean responsible  
14 in as far as training cadets?

15 Q. Yes.

16 A. Yes.

17 Q. So do you have any idea  
18 whether Lieutenant Colonel Hickes was  
19 in charge of training at the State  
20 Police Academy during the Walp  
21 administration?

22 A. I don't remember that he was.  
23 I don't know.

24 Q. Do you make, when you talked  
25 to the FBI originally, did you make

1 an effort to find out how long this  
2 supposed corruption at the State  
3 Police Academy had been going on?

4 A. We never talked about  
5 corruption at the State Police  
6 Academy.

7 Q. Well, corruption in getting  
8 into the State Police Academy?

9 A. I don't recall there being a  
10 discussion about how long this  
11 investigation had been occurring, no.

12 Q. Did Agent Kush tell you at any  
13 point that the case had sat around  
14 for a few years and his supervisors  
15 wanted him to dispose of it one way  
16 or the other?

17 A. Later, yes. That information  
18 was brought to my attention far after  
19 this October time frame.

20 Q. Well, when you made the  
21 decision to go to Lieutenant Colonel  
22 Hickes, had you considered the  
23 possibility that the corruption by  
24 virtue --- the scheme of trying to  
25 buy your way into the police academy

1 may have begun back when Lieutenant  
2 Colonel Hickes was either a major in  
3 charge of training, I guess you had  
4 said you never knew that, or even  
5 while he was a deputy commissioner?

6 ATTORNEY BAILEY:

7 I'm going to object to  
8 the relevancy of these  
9 questions and to a total lack  
10 of foundation. There are no  
11 facts before any of us to  
12 indicate that running the  
13 academy has anything to do  
14 with someone conjuring up,  
15 getting involved in or  
16 providing some kind of illicit  
17 appointment to the academy,  
18 and I object.

19 BY ATTORNEY GUIDO:

20 Q. Did you consider the  
21 possibility?

22 ATTORNEY BAILEY:

23 You may respond to the  
24 question.

25 A. No, ma'am. And to be clear, I

1 don't have any recollection of  
2 Colonel Hickes being the director of  
3 training and education. I'm not  
4 arguing with you. I simply don't  
5 know. No, I gave no thought to the  
6 factor. I gave no thought to the  
7 notion that what was being reported  
8 to me in 1998, could extend prior to  
9 1995. Because if you're telling me  
10 he was a major in training and  
11 education, that would have had to  
12 have been --- in fact, I don't even  
13 think that could have been in the  
14 '90s. So, no, I never gave that a  
15 thought.

16 BY ATTORNEY GUIDO:

17 Q. Well, what about when --- I  
18 guess I made my question compound by  
19 asking it. But did you consider the  
20 possibility that --- let me break  
21 this down. Colonel Evanko and his  
22 deputies --- well, Colonel Evanko,  
23 Lieutenant Colonel Coury and  
24 Lieutenant Colonel Westcott were all  
25 new to the command staff with the

1 Ridge administration; right?

2 A. Correct.

3 Q. Lieutenant Colonel Hickes had  
4 been a deputy commissioner in the  
5 prior administration, as well?

6 A. Correct.

7 Q. So what I'm wondering is  
8 whether you ever took into  
9 consideration as you're making this  
10 judgment call, did you take into  
11 consideration the fact that this  
12 scheme could have been going on, even  
13 back when Lieutenant Colonel Hickes  
14 was a deputy commissioner in the  
15 prior administration?

16 A. No, ma'am. I never gave that  
17 a thought.

18 Q. And it was not until later  
19 that you found out that, in fact,  
20 this investigation had been going on  
21 for years?

22 A. Yes. Yes, it was a year or  
23 two. I don't recall exactly. Yes,  
24 later I found that out.

25 MS. LYDE:

1                   Excuse me. I'm going  
2                   to change tapes.

3                   ATTORNEY GUIDO:

4                   Okay.

5                   MS. LYDE:

6                   It's 11:03 a.m. The  
7                   end of tape number one of the  
8                   deposition of Darrell Ober.

9                   BRIEF INTERRUPTION

10                  MS. LYDE:

11                  11:04 a.m., tape two of  
12                  the deposition of Darrell  
13                  Ober. Thank you.

14                  BY ATTORNEY GUIDO:

15                  Q.        Okay. You mentioned that you  
16                  didn't really know Major Conley at  
17                  the point that you had to make a  
18                  decision about who to tell. If Major  
19                  Merryman had still been your  
20                  supervisor, would you have told him?

21                  ATTORNEY BAILEY:

22                  Objection. Calls for  
23                  speculation. You may respond.

24                  A.        See, that brings in a much  
25                  different set of facts to the table,

1 because of Major Merryman's  
2 background, I'm a little more  
3 familiar with. I don't know that I  
4 can answer a hypothetical like that,  
5 Ms. Guido.

6 BY ATTORNEY GUIDO:

7 Q. You don't know whether you  
8 would have trusted Major Merryman  
9 with that information?

10 ATTORNEY BAILEY:

11 Objection to the form  
12 of the question. Objection to  
13 the use of the word trust.

14 A. Yes. I ---.

15 BY ATTORNEY GUIDO:

16 Q. Do you know whether you would  
17 have trusted Major Merryman? Do you  
18 know whether you would have trusted  
19 Major Merryman with the information?

20 ATTORNEY BAILEY:

21 I want to object to the  
22 question and instruct you that  
23 you don't have to answer it.  
24 I prefer that you do, but you  
25 don't have to. Answer the

1 question, if you can.

2 A. I believe, given a different  
3 set of facts, Ms. Guido, I would have  
4 made a decision based on what I  
5 thought was the best interest of the  
6 agency. I can't say here today and  
7 tell you what I would have done three  
8 years ---. That to me was never a  
9 matter of trust. It was a matter of  
10 an appropriate decision, based on  
11 what I was --- the information I was  
12 provided. And I think it would be an  
13 insult to Major Merryman to sit here  
14 and speculate whether I would have  
15 trusted him or not. These are  
16 different, much different  
17 circumstances. I made a decision at  
18 that time, based on what I thought  
19 was the right thing to do with  
20 respect to the agency's needs.

21 BY ATTORNEY GUIDO:

22 Q. I'm a little confused about  
23 you saying that it was never an issue  
24 of trust, because I thought that that  
25 was the whole point of talking about

1 the fact that Colonel Hickes was of  
2 impeccable character and you knew  
3 that he wasn't the kind of person  
4 that would be involved in this and  
5 you knew his background and you knew  
6 he had integrity. I mean, wasn't  
7 that the whole point, trust?

8 A. No. I think trust is a key  
9 element. But the way you're giving  
10 it to me, I'm feeling like you're  
11 making that the only criteria.

12 ATTORNEY BAILEY:

13 What paragraph ---?

14 ATTORNEY GUIDO:

15 I'm looking to see what  
16 paragraph I'm in.

17 BY ATTORNEY GUIDO:

18 Q. Okay. Page eight, still  
19 paragraph 27, it's next to the last  
20 sentence, where you say you could not  
21 inform Evanko or one of his  
22 assistants because of the clear and  
23 unambiguous FBI directive. Today,  
24 you don't recall whether there was a  
25 clear and unambiguous directive; do

1 you?

2 A. Oh, yes. I recall there was a  
3 very clear and unambiguous directive.  
4 Maybe directive is not the best word.  
5 But there was a very clear and  
6 unambiguous understanding between  
7 Agent Kush and I about what I have  
8 described.

9 Q. The reason I clarified that  
10 was because earlier I think and I  
11 think perhaps you clarified it for me  
12 now is, it was a clear and  
13 unambiguous understanding between you  
14 and Agent Kush. It was not  
15 necessarily a directive from Agent  
16 Kush to you; is that right?

17 A. Agent Kush was not in a  
18 position to give me orders. There  
19 was a request from Agent Kush to keep  
20 this matter confidential.

21 Q. Okay.

22 A. There was a discussion about,  
23 as I've already described,  
24 confidentiality, sensitivity and  
25 discretion. I took it in the form of

1 a directive simply because I'm  
2 talking to a person of a law  
3 enforcement agency and it only made  
4 sense to do that.

5 Q. On the last sentence of the  
6 same paragraph, upon learning of the  
7 FBI probe from Ober, Hickes ordered  
8 you, Ober, to maintain  
9 confidentiality and to keep Hickes  
10 informed. Do you remember when you  
11 told Colonel Hickes about this?

12 A. No.

13 Q. Was it after the first  
14 conversation with Agent Kush?

15 A. Yes. When I was interrogated  
16 by IAD, they produced a document.  
17 They, Werts and Williams, somehow  
18 confirmed for me that it had been on  
19 October 5th. But I honestly don't  
20 recall that. I don't know.

21 Q. Okay. But at that point, you  
22 had only had the one conversation  
23 with Agent Kush?

24 A. You asked me that. That's  
25 what I recall.

1 Q. Can you tell me, just tell me  
2 what --- describe the conversation  
3 with Hickes. What was said? What  
4 did you tell him? What did he tell  
5 you?

6 A. I discussed this with Colonel  
7 Hickes. I'm sure there's a whole lot  
8 more than what's here. I informed  
9 Colonel Hickes that I had received  
10 this information from the FBI about  
11 this public political corruption case  
12 of great public interest. I was  
13 sure, I assumed, and this information  
14 --- or their information was that  
15 there was a state trooper potentially  
16 implicated in a hiring irregularity  
17 situation or what have you. I tried  
18 to paraphrase it as best I could for  
19 him, what I was told of the sum and  
20 substance of my conversation with  
21 Agent Kush.

22 Q. Did you tell Lieutenant  
23 Colonel Hickes that the FBI told you  
24 that the term colonel had been used?

25 A. Yes. There was specific

1 discussion with the FBI. I think  
2 I've described it as trying to frame  
3 the boundaries of this investigation.

4 Q. But what I'm saying is, when  
5 you first told Hickes about this, did  
6 you tell him that the FBI had told  
7 you that a colonel could possibly be  
8 involved, using that term, colonel?

9 A. Well, I'm sure that I did,  
10 again, in the context of framing the  
11 boundaries of this investigation. As  
12 I've said many times, positions were  
13 discussed, potentials were discussed.  
14 And it would only make sense that  
15 either if the position weren't  
16 referred to by rank, it would have  
17 been referred to by title.

18 Q. Did you tell Hickes whether it  
19 was you or the FBI that brought up  
20 the term colonel?

21 A. I don't know.

22 Q. You don't remember?

23 A. No. I'm relating a  
24 conversation. I don't recall.

25 Q. And you said you were supposed

1 to keep Hickes informed. Did you, in  
2 fact, keep him informed?

3 A. Yes.

4 Q. And by keeping him informed,  
5 was does that mean?

6 A. When I informed Colonel Hickes  
7 of this FBI's, of the existence of  
8 this investigation, as the suit  
9 states, he gave me three orders. And  
10 one of them was to keep him informed  
11 of any significant developments. And  
12 I did that. He gave me three orders,  
13 ma'am, and I followed them.

14 Q. In paragraph 28, you allege  
15 that the investigation, the FBI's  
16 investigation, may have been  
17 compromised even before you learned  
18 about it from Agent Kush. What do  
19 you mean by that?

20 A. In a subsequent conversation  
21 with Agent Kush, I come to find that  
22 Agent Kush revealed to me that they  
23 had contacted members of the state  
24 police prior to contacting me.

25 Q. But you didn't know that at

1 the time you went to Hickes?

2 A. No, I did not.

3 Q. And according to this same  
4 paragraph, you deduced that the  
5 investigation may have been  
6 compromised because Mark Campbell was  
7 in the governor's office and Evanko  
8 went to Campbell to get permission to  
9 do an investigation. Do you see  
10 where that is in paragraph 28?

11 A. Uh-huh (yes).

12 Q. What made you think that  
13 Evanko had gone to Mark Campbell to  
14 get permission to do the  
15 investigation?

16 A. I was told that that's what  
17 occurred.

18 Q. Who told you that?

19 A. I believe that was either  
20 Major Morris or Colonel Hickes, but  
21 I'm not certain.

22 Q. Major Morris?

23 A. Morris, yes, ma'am.

24 Q. What was Major Morris' role in  
25 all this?

1 A. I don't think he has a role in  
2 all of this.

3 Q. Well, how would he know that?

4 A. I don't have any idea. I'll  
5 also tell you it's been my experience  
6 in the past couple years that that  
7 fact or that issue seems to be a  
8 matter of institutional knowledge. I  
9 mean, I've heard that from many ---  
10 many different people have mentioned  
11 that to me right now.

12 Q. Who?

13 ATTORNEY BAILEY:

14 Let's make sure we know  
15 what we're talking about, many  
16 different people mentioned.  
17 Do you mean that Mr. Evanko  
18 went to Mr. Campbell to seek  
19 permission for an  
20 investigation?

21 ATTORNEY GUIDO:

22 Yes, yes.

23 A. Oh, I've heard that from a  
24 number of sources --- number of  
25 individuals.

1 ATTORNEY BAILEY:

2 Just so we're clear on  
3 that.

4 BY ATTORNEY GUIDO:

5 Q. Their names?

6 A. Can I come back to that, only  
7 because I wouldn't want to misspeak?  
8 It just really became a source of  
9 rumors that that's what occurred.

10 Q. You don't recall any specific  
11 person that told you that?

12 A. Not right now, I can't.

13 ATTORNEY BAILEY:

14 Beyond Mr. Hickes or  
15 Mr. Morris.

16 BY ATTORNEY GUIDO:

17 Q. Have you ever discussed it  
18 with anybody from the governor's  
19 office?

20 A. Discussed what, ma'am, this  
21 investigation?

22 Q. Yes.

23 A. No.

24 Q. Did anyone --- do you remember  
25 whether anyone from the governor's

1 office ever said anything to you  
2 about Evanko seeking permission from  
3 Campbell?

4 A. No.

5 Q. You also say in that paragraph  
6 that you learned that FBI body wires  
7 from an informant mentioned sources  
8 in the governor's office, high PSP  
9 officials and even a state senator  
10 and a state representative, earlier  
11 in the investigation. When did you  
12 first learn about those FBI body  
13 wires?

14 A. Well, Agent Kush, in our  
15 contact, he, at some point --- I  
16 mean, these things were discussed.  
17 And he eventually supplied me with  
18 transcripts of those body wires.

19 Q. I was just trying to get an  
20 idea of when that would have been.

21 A. When these things were  
22 discussed?

23 Q. Yes, when you first learned  
24 about the FBI body wires.

25 A. Well, I think he mentioned

1 that during the first phone call,  
2 that there were --- this information  
3 were developed from employment of  
4 body wires. I think that's how this  
5 whole investigation started, I  
6 believe, as I recall.

7 Q. And then you would have seen  
8 the transcripts of that when, of the  
9 body wires?

10 A. I don't recall. He sent  
11 transcripts, I believe, on two or  
12 three occasions. But I just don't  
13 remember when I received them.

14 Q. You said that you learned that  
15 another PSP member had been informed  
16 before Ober was, in an earlier  
17 attempt at investigation. When did  
18 you find that out?

19 A. I found that out --- I had  
20 occasion to talk to Agent Kush and  
21 I'm trying to recall when that was.  
22 It could have been around the time  
23 that the whistleblower suit was  
24 filed. But I'm not certain now. I  
25 don't recall exactly when that was.

1 It was after May of '99, but I just  
2 don't remember when that was for  
3 sure.

4 Q. But you think you found it out  
5 from Agent Kush?

6 A. Oh, yes. Yes.

7 Q. And finally in that paragraph,  
8 you say, only the FBI, to whom Evanko  
9 personally went, knows the answers to  
10 these questions. How do you know  
11 that Evanko personally contacted the  
12 FBI?

13 A. Mr. Campbell and Major  
14 Williams have already testified that  
15 he did. And Evanko threatened to do  
16 that that night. And Agent Kush told  
17 me that he was fairly certain that  
18 Evanko called his SAC --- his name  
19 escapes me at the moment.

20 Q. When did Agent Kush tell you  
21 that Evanko had called his SAC?

22 A. That was during that  
23 conversation, the one I've just  
24 described. I can't recall when that  
25 was now.

1 ATTORNEY BAILEY:

2 Hold on just a second,  
3 please. .

4 ATTORNEY GUIDO:

5 Sure.

6 BRIEF INTERRUPTION

7 ATTORNEY BAILEY:

8 Thank you very much.

9 BY ATTORNEY GUIDO:

10 Q. Setting aside what may have  
11 been said in subsequent depositions,  
12 at the time that this Complaint was  
13 filed, what made you think that  
14 Evanko had personally gone to the  
15 FBI?

16 A. What made me think that he had  
17 personally gone to the FBI is because  
18 he said he was going to. And I  
19 subsequently learned from talking to  
20 Agent Kush that Agent Kush was of the  
21 opinion that he did.

22 Q. Okay. Did Evanko ever talk to  
23 Kush personally?

24 A. I don't know.

25 Q. Paragraph 29, you say that

1 upon information and belief, you  
2 believe a real possibility exists,  
3 still exists that the corruption  
4 investigation was truncated or  
5 otherwise limited because of PSP  
6 leadership interests and/or concerns  
7 of others. Could you explain what  
8 you mean by that?

9 A. I had --- what I mean by that  
10 was my concern upon notifying Colonel  
11 Evanko of the investigation's  
12 existence, his reaction to that and  
13 his threats to call the FBI. That  
14 statement is based in part on the  
15 eventual outcome of the criminal  
16 investigation involving the parties,  
17 the two individuals who were  
18 arrested. And thirdly, as a result  
19 of my discussion with Agent Kush when  
20 he said that he was transferred,  
21 which is what Evanko threatened to do  
22 when we told him.

23 Q. Agent Kush told you what about  
24 his transfer?

25 A. He said he was transferred.

1 Q. But what did he say about the  
2 transfer, anything other than I was  
3 transferred?

4 A. Not that I can recall.

5 Q. He didn't tell you why he was  
6 transferred?

7 A. Not that I can recall. He was  
8 not real interested in sharing a lot  
9 of this with me, ma'am.

10 Q. So you're inferring that the  
11 transfer had something to do with  
12 this investigation?

13 A. It would certainly appear so.

14 ATTORNEY BAILEY:

15 I object. His prior  
16 testimony was that Mr. Evanko  
17 told him he was going to have  
18 him transferred. Kush says  
19 he's transferred.

20 BY ATTORNEY GUIDO:

21 Q. But you don't know why he was  
22 transferred; right?

23 A. I was not a part of the  
24 decision making that led to Agent  
25 Kush's transfer, ma'am, no.

1 Q. So I think my choice of words  
2 was accurate that this was an  
3 inference, based on the facts you  
4 inferred; is that right?

5 ATTORNEY BAILEY:

6 Objection to the form  
7 of the question.

8 BY ATTORNEY GUIDO:

9 Q. Did you infer that from ---  
10 did you make a deduction that ---?

11 ATTORNEY BAILEY:

12 Yes, he deduced it.

13 That's correct.

14 ATTORNEY GUIDO:

15 I'm asking the witness.

16 ATTORNEY BAILEY:

17 Yes. He deduced it.

18 You're quite right.

19 A. I know what the outcome was,  
20 ma'am, and I know what the drivers  
21 were. And perhaps deduction is a  
22 correct word but there's certainly no  
23 dispute about ---.

24 BY ATTORNEY GUIDO:

25 Q. And that's your deduction, but

1 you don't know for a fact; is that  
2 correct?

3 A. I was not part of the decision  
4 making.

5 ATTORNEY BAILEY:

6 He took Colonel Evanko  
7 at his word.

8 BY ATTORNEY GUIDO:

9 Q. Paragraph 32, I guess that's  
10 --- now that I'm looking at the  
11 paragraph, that's what we've just  
12 been covering. And that is that you  
13 believed that Colonel Evanko did  
14 something --- had some kind of  
15 inappropriate influence over at the  
16 FBI; is that right?

17 A. Yes.

18 Q. And how do you know that it  
19 was inappropriate influence, as  
20 opposed to perhaps Agent Kush's  
21 superiors deciding that he had  
22 handled the investigation  
23 inappropriate or something?

24 A. We're going to have to tighten  
25 that one up for me. I'm not sure

1 what you just asked me.

2 Q. Well, you said that Agent  
3 Kush's transfer was the result of  
4 inappropriate influence ---.

5 A. I say I believe that, ma'am.  
6 Evanko went ballistic when we told  
7 him. He said he was going to have  
8 the agents transferred tomorrow. And  
9 the end result of that was that an  
10 agent gets transferred, as well as  
11 me. I guess I deduced that he  
12 followed through on his word. The  
13 criminal investigation has fallen  
14 apart. It just seems to me that  
15 that's an accurate statement, yes,  
16 ma'am.

17 Q. When you say Agent Kush was  
18 quickly transferred, do you remember  
19 when he was transferred?

20 A. No.

21 Q. Do you have any idea when he  
22 was transferred?

23 A. No.

24 Q. I guess paragraph 33 is the  
25 same. You believe that Colonel

1 Evanko sought the personal approval  
2 of Mark Campbell again. You heard  
3 that from other people?

4 A. Yes.

5 Q. Paragraph 34, you say Campbell  
6 and Evanko authorized an  
7 investigation, even though they both  
8 knew Ober had committed no wrong.  
9 What makes you think that they knew  
10 you had done nothing wrong?

11 A. I was told that that fact was  
12 brought to their attention.

13 Q. Who told you that?

14 A. Captain Brown.

15 Q. When was that?

16 A. When was I told?

17 Q. Yes.

18 A. I would have to again --- I  
19 believe that was September of '99 or  
20 so. It could have been before then.

21 Q. Said that Campbell and Evanko  
22 had been told that you had done  
23 nothing wrong?

24 A. I was told that there was a  
25 meeting conducted that included the

1 investigators, Conley, all the  
2 Defendants, Captain Skurkis  
3 (phonetic) and Captain Brown. And  
4 the subject of this meeting was how  
5 to conduct this witch hunt. And that  
6 they were told there had been no  
7 regulations violated.

8 Q. Who said that?

9 A. I was informed of this fact by  
10 Captain Brown.

11 Q. No. I meant, who said to  
12 Evanko and Campbell. I'm sorry. My  
13 question wasn't clear. Who told  
14 Campbell and Evanko that you hadn't  
15 done anything wrong?

16 A. I don't know.

17 Q. You don't know who said that?

18 A. No.

19 Q. Whose opinion that was?

20 A. No, I don't know.

21 Q. Now, Colonel Evanko wasn't  
22 privy to what had transpired between  
23 you and the FBI; was he?

24 A. No.

25 Q. And he also was not privy to

1 what transpired between you and  
2 Lieutenant Colonel Hickes?

3 A. Correct.

4 Q. So was it unreasonable for  
5 Colonel Evanko to want to know what  
6 had happened?

7 ATTORNEY BAILEY:

8 Objection. The form of  
9 that question calls for the  
10 wildest speculation. I really  
11 object to that. I ask  
12 Counsel, please rephrase that.

13 BY ATTORNEY GUIDO:

14 Q. I'm not asking to speculate.  
15 I'm asking your opinion about whether  
16 it was reasonable for Colonel Evanko  
17 to want to know what had happened.

18 ATTORNEY BAILEY:

19 All right. I'm going  
20 to object. But Counsel does  
21 make a good point in terms of  
22 --- are you asking is there  
23 any basis for his ---?

24 ATTORNEY GUIDO:

25 I'm going to follow up

1 on that, yes.

2 ATTORNEY BAILEY:

3 If you want to ask the  
4 captain if he knows of any  
5 basis for the ---.

6 BY ATTORNEY GUIDO:

7 Q. I just want to know whether or  
8 not ---

9 ATTORNEY BAILEY:

10 You can respond.

11 BY ATTORNEY GUIDO:

12 Q. --- you think it was  
13 --- was it reasonable or unreasonable  
14 or not?

15 A. For?

16 Q. Your opinion about Colonel  
17 Evanko --- okay. In May 1999, you  
18 tell Colonel Evanko for the first  
19 time?

20 A. Yes.

21 Q. What has happened?

22 A. Yes.

23 Q. And Colonel Evanko learns for  
24 the first time that the FBI contacted  
25 you, that you told Hickes and that

1 Hickes ordered you not to say  
2 anything to anybody else. Now,  
3 Colonel Evanko, he didn't hear what  
4 the FBI told you or what you told the  
5 FBI. He didn't hear what you said to  
6 Hickes or Hickes said to you or any  
7 of that. He wasn't privy to any of  
8 that. So was it reasonable or  
9 unreasonable, in your opinion, for  
10 Evanko to want to get to the bottom  
11 of it and find out what happened?

12 ATTORNEY BAILEY:

13 Same objection. But  
14 you may respond.

15 A. It was completely  
16 unreasonable.

17 BY ATTORNEY GUIDO:

18 Q. And why?

19 A. Because there's no basis for  
20 any further discussion on the matter.  
21 He has senior commanders acting in  
22 their capacity as senior commanders  
23 in making decisions and he was  
24 informed. The investigation would  
25 run its course without his

1 interference or not. There was no  
2 --- what good would come out of  
3 conducting an investigation, for what  
4 purpose? What would be the objective  
5 in asking anything? He demanded a  
6 memo from me that day, which I  
7 supplied, that summarizes the thing.  
8 There's nothing else to tell.

9 Q. Well, in your Complaint you  
10 allege that Colonel Evanko was upset  
11 and ---.

12 A. I'm alleging he was enraged.

13 Q. Okay. Enraged, whatever. But  
14 you said that he's upset because you  
15 didn't act with blind loyalty and  
16 inform him about the FBI  
17 investigation. And what I'm asking  
18 you is, on the other hand, weren't  
19 you expecting --- are you asking  
20 Colonel Evanko to act with blind  
21 loyalty to you and just accept what  
22 you've told him as true, without  
23 doing an investigation?

24 A. There would certainly be no  
25 reason not to.

1 Q. So he's supposed to just  
2 accept what you've said is true;  
3 right?

4 A. There's no reason not to.

5 ATTORNEY BAILEY:

6 I'm going to object to  
7 the form of that question and  
8 move to strike. It's already  
9 answered.

10 BY ATTORNEY GUIDO:

11 Q. I guess I'm just kind of  
12 trying to figure out what the harm  
13 would be in an investigation.

14 A. I'm trying to figure out what  
15 the good would be.

16 Q. Well, besides that ---.

17 ATTORNEY BAILEY:

18 What investigation are  
19 you talking? Are you talking  
20 about, Counsel --- now, wait,  
21 please.

22 ATTORNEY GUIDO:

23 I'll clarify. I'll be  
24 happy to clarify.

25 ATTORNEY BAILEY:

1 Well, let me finish my  
2 request. Are you talking  
3 about an investigation into  
4 Captain Ober for not running  
5 to the commissioner and  
6 telling him that there was a  
7 potential problem? Or are you  
8 talking about the FBI  
9 investigation itself into the  
10 corruption? Which  
11 investigation do you mean?

12 ATTORNEY GUIDO:

13 I said I'd be happy to  
14 clarify.

15 ATTORNEY BAILEY:

16 Okay. Thank you.

17 BY ATTORNEY GUIDO:

18 Q. You were upset because Colonel  
19 Evanko ordered an administrative  
20 inquiry into the facts surrounding  
21 the FBI's contact with you, your  
22 decision to tell Hickes and Hickes'  
23 decision that that should be kept  
24 between you and Hickes?

25 A. No. I'm upset that an

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1 investigative process was corrupted,  
2 without any allegation or belief of  
3 misconduct, ma'am.

4 Q. What I'm asking you, though,  
5 is, he asked to have that matter  
6 investigated and that's what --- and  
7 by an investigation, I'm referring to  
8 what ---

9 ATTORNEY BAILEY:

10 What matter?

11 BY ATTORNEY GUIDO:

12 Q. --- Major Werts and Major  
13 Williams, the inquiry that they  
14 conducted. You were upset that they  
15 conducted that inquiry; right?

16 ATTORNEY BAILEY:

17 What matter  
18 investigated?

19 ATTORNEY GUIDO:

20 I just said.

21 BY ATTORNEY GUIDO:

22 Q. We all know that Major Werts  
23 and Major Williams conducted an  
24 administrative inquiry or an  
25 administrative investigation into the

1 facts surrounding the FBI's contact  
2 with you, your report of the matter  
3 to Hickes and the decision not to  
4 tell anybody else about that. That  
5 was the subject of the administrative  
6 inquiry. And all I'm asking you  
7 is ---.

8 A. I don't know that I would  
9 agree with that, ma'am.

10 Q. Well, then tell me what you  
11 would --- tell me what the  
12 investigation ---.

13 A. What I got out of that is that  
14 was a witch hunt to scrutinize every  
15 detail and look for any place that I  
16 tripped up the handling.

17 Q. And were you --- and that  
18 really gets to the bottom of it.  
19 Were you upset because you thought  
20 that maybe the investigation would  
21 reveal some type of error in judgment  
22 on your part?

23 ATTORNEY BAILEY:

24 Objection.

25 A. No, I wasn't worried about my

1 judgment at all, ma'am.

2 ATTORNEY BAILEY:

3 Objection and move to  
4 strike. You can respond.

5 BY ATTORNEY GUIDO:

6 Q. So that's what I'm trying to  
7 understand. I mean, you've been the  
8 subject of other investigations and  
9 you've been vindicated?

10 A. Yes.

11 Q. So if an investigation is  
12 going to be conducted, one of the  
13 results of that can be that you're  
14 vindicated?

15 A. I've never received an  
16 adjudication on this. The heart and  
17 soul of an investigative process is  
18 an allegation of misconduct. There  
19 is none in this case, ma'am. I know  
20 enough about internal affairs to know  
21 that you bastardize and prostitute  
22 that process when you willy-nilly  
23 start investigating people without  
24 any evidence of wrongdoing.

25 Q. Well, sometimes you have to do

1 some of the investigation before you  
2 can really determine who the subject  
3 of the investigation is.

4 A. I've never heard of that.  
5 That's a witch hunt. Who the subject  
6 is?

7 Q. Yes.

8 A. No, we had a subject. Ma'am,  
9 we had a subject. That was me. What  
10 the investigation was for was to see  
11 if I committed any wrongdoing, which  
12 we already know we didn't.

13 Q. I know.

14 ATTORNEY GUIDO:

15 Could you hand that  
16 down to the Court Reporter to  
17 be marked? I forget what  
18 exhibit number that is.

19 A. Seven.

20 (Deposition Exhibit  
21 Number Seven marked for  
22 identification.)

23 ATTORNEY BAILEY:

24 I'd like an offer on  
25 this. What's the point here?

1 ATTORNEY GUIDO:

2 Well, I think if  
3 Captain Ober reads his note,  
4 then we might be able to  
5 understand what the point is.

6 BY ATTORNEY GUIDO:

7 Q. On December 4 --- well, on a  
8 memo dated December 4 at the bottom,  
9 there is handwriting. And that is  
10 your handwritten note; is it not?

11 A. Yes. Uh-huh (yes).

12 ATTORNEY BAILEY:

13 What's the number of  
14 this exhibit?

15 A. Seven.

16 ATTORNEY GUIDO:

17 Seven.

18 BY ATTORNEY GUIDO:

19 Q. And at the bottom of that, in  
20 your handwriting, it says, file note,  
21 it is my position that an  
22 investigation should ultimately  
23 determine if an individual is or is  
24 not a subject. I caution against  
25 premature determinations.

1 ATTORNEY BAILEY:

2 I object.

3 BY ATTORNEY GUIDO:

4 Q. Isn't the point of that that  
5 sometimes an investigation has to be  
6 ---?

7 ATTORNEY BAILEY:

8 Don't answer.

9 BY ATTORNEY GUIDO:

10 Q. It takes the investigation to  
11 determine whether the subject ---  
12 who's the subject?

13 ATTORNEY BAILEY:

14 Don't respond, Mr.

15 Ober. Counsel, I think this  
16 is the worst kind of  
17 sophistry. And I think it's  
18 an absolute disgrace. I'm  
19 going to object very strongly  
20 to what you're trying to do  
21 here. These circumstances are  
22 different. You're trying to  
23 characterize a different  
24 situation, a totally different  
25 fact situation and mislead and

1 obfuscate this legal process.  
2 I very strongly object to what  
3 you're doing on ethical  
4 grounds. It's unprofessional.

5 ATTORNEY GUIDO:

6 Your objection's noted.

7 ATTORNEY BAILEY:

8 And I wish you could  
9 --- well, that's all right.  
10 I'm going to let you go ---.

11 ATTORNEY GUIDO:

12 Your objection's noted.

13 ATTORNEY BAILEY:

14 Counsel, please, with  
15 all due respect, I know we  
16 respectfully disagree on some  
17 things but try to let me  
18 finish when I'm talking and  
19 I'll finish up very quickly  
20 for you.

21 ATTORNEY GUIDO:

22 Well, you've never  
23 finished quickly yet.

24 ATTORNEY BAILEY:

25 All right. Move to

1 strike the snide, irrelevant,  
2 incorrect and rude comment.  
3 Mr. Ober, you can go ahead and  
4 read and respond to the  
5 exhibit. But I object, not  
6 only to the question that  
7 Counsel had posited, but to  
8 the exhibit itself. You can  
9 respond.

10 A. Well, I don't know the factual  
11 background beyond this one item that  
12 was presented to me. But, you know,  
13 I'll assume or deduce that at some  
14 point in this investigation, this IAD  
15 number 11029, there was an allegation  
16 of misconduct. And that an  
17 investigation was being conducted.  
18 And at some point there was  
19 discussion about whether or not  
20 someone was or wasn't a subject, and  
21 the investigation continued in order  
22 to determine whether or not  
23 misconduct occurred or this person  
24 should or shouldn't be carried as a  
25 subject. I guess that's what this is

1 all about.

2 BY ATTORNEY GUIDO:

3 Q. And my question ---.

4 A. And I don't have any clue as  
5 to how it compares to my situation.

6 Q. Well, because my question had  
7 been to you that isn't it true that  
8 sometimes it takes the investigation  
9 --- it takes some investigating, some  
10 finding out of the facts to determine  
11 whether a particular person is or is  
12 not the subject of an investigation.  
13 And you yourself wrote a note in  
14 which you cautioned against making a  
15 premature determination of whether a  
16 person is a subject or not.

17 A. Ma'am, ---.

18 ATTORNEY BAILEY:

19 Please, you know, I  
20 very strenuously object to  
21 this. He has testified that  
22 there was an underlying, or at  
23 least based upon his limited  
24 knowledge, there's an  
25 underlying factual situation,

1           which brought this  
2           investigation or some need to  
3           evaluate these facts before.

4                   You're taking a  
5           situation in which there is  
6           absolutely no basis for an  
7           inquiry. And his terminology  
8           in describing that as a witch  
9           hunt is correct. And I think  
10          without providing the  
11          documents or some facts upon  
12          which --- you can study the  
13          ceiling as long as you wish,  
14          Counsel. And when you want to  
15          give us a report on its  
16          contents, we'd be grateful.

17                   But the point in fact  
18          is, he can respond to this.  
19          But I think you have a duty to  
20          place some facts in evidence.  
21          You haven't done so. I  
22          respond to your --- I object  
23          to your question. I object to  
24          this issue. I think it's  
25          decidedly misleading.

1 And there are no facts in this  
2 record whatsoever to support  
3 what the background of this  
4 exhibit investigation are.

5 Mr. Ober, if you have a  
6 recollection of it, you can  
7 respond. But I caution you  
8 not to speculate.

9 A. I have no recollection of the  
10 background or exact circumstances  
11 surrounding this document.

12 BY ATTORNEY GUIDO:

13 Q. I'm not asking you that, sir.  
14 Maybe I should clarify what my  
15 question is.

16 A. I don't think you need to.  
17 Your question makes no sense, because  
18 it's comparing apples and oranges.  
19 This cart is so far ahead of the  
20 horse, ma'am. This investigation,  
21 I'm sure, had some element of  
22 reporting of misconduct or something.  
23 And it would appear that there was a  
24 need to put in an investigator to  
25 make a decision about a subject's

1 status. That has absolutely nothing  
2 to do with the situation I was in  
3 whatsoever.

4 Q. But that's kind of my point.  
5 And that is, that each case turns on  
6 its own facts and its own  
7 circumstances.

8 A. That assumes there is a case,  
9 ma'am.

10 Q. But each case is, each  
11 situation is unique; isn't it?

12 A. I don't know what you ---  
13 what situation?

14 Q. Well, you're trying to say  
15 this is apples and oranges because  
16 what happened in that case is not  
17 like what happened to me. So what  
18 I'm saying is, all cases are not  
19 alike.

20 A. Yes, they are.

21 Q. And how a particular case may  
22 be handled in certain circumstances  
23 may be different.

24 A. Those cases are alike in the  
25 most critical area that I can

1     imagine. That is, they have a report  
2     of misconduct as the trigger  
3     mechanism. I have never been a part  
4     of an investigation when someone just  
5     said, go investigate something and  
6     see what you find and then we'll  
7     initiate the internal affairs  
8     process.

9             You're trying to mix things up  
10    here. There was nothing about what  
11    was done to me that resembles what  
12    you've just described up to and  
13    including an adjudication. You  
14    mentioned earlier I've been a subject  
15    of investigation. That's true.  
16    Those have been handled in accordance  
17    with the department procedures and in  
18    accordance with my labor contract.  
19    And I received an adjudication that  
20    was unfounded.

21    Q.       And on paragraph 37, you say  
22    investigations such as those done on  
23    Captain Ober have the effect of  
24    destroying an officer's standing and  
25    reputation among his colleagues.

1 Now, as of September 1998, you've  
2 told us that you were one of the best  
3 and brightest at PSP and that there  
4 was no foreseeable limit to your  
5 potential. But you had been  
6 investigated before September 1998;  
7 right?

8 A. Yes.

9 Q. And so that mere fact that an  
10 investigation was conducted, did not  
11 damage your career in any way?

12 A. Those investigations didn't,  
13 to my knowledge, damage my career.  
14 That's correct. This one has. Would  
15 you care for me to speak to that?

16 Q. No. I think we've gotten it.  
17 And we'll go over the damage in a  
18 minute. You said in, I think it's in  
19 that same paragraph, you said that  
20 one of the purposes of Evanko's  
21 investigation was to learn the  
22 breadth and depth of your knowledge  
23 about the FBI investigation and  
24 whether Evanko and someone in the  
25 governor's office was a target, or

1 actually under suspicion. What's  
2 wrong with that?

3 A. Where are you in the  
4 Complaint, ma'am?

5 Q. On page 11.

6 ATTORNEY BAILEY:

7 Page 11.

8 BY ATTORNEY GUIDO:

9 Q. Paragraph 37.

10 ATTORNEY BAILEY:

11 It starts on the third  
12 or fourth sentence.

13 ATTORNEY GUIDO:

14 Q. You said that there were  
15 two ---.

16 ATTORNEY BAILEY:

17 Give him a chance to  
18 read the paragraph to refresh  
19 it.

20 ATTORNEY GUIDO:

21 I just was going to  
22 tell him where.

23 ATTORNEY BAILEY:

24 Yes.

25 BY ATTORNEY GUIDO:

1 Q. If you look to where it says  
2 two unlawful reasons. That's where  
3 it starts.

4 ATTORNEY BAILEY:

5 Darrell, go to the  
6 beginning. Read the entire  
7 paragraph. Think about it  
8 before you answer her  
9 question.

10 WITNESS COMPLIES

11 A. Okay. What's your question,  
12 ma'am?

13 BY ATTORNEY GUIDO:

14 Q. My question is, when you state  
15 that one of the reasons that Evanko  
16 --- one of the two illegal reasons  
17 that you cite, are that Evanko wanted  
18 to learn the breadth and depth of  
19 your knowledge about the FBI  
20 investigation and whether Evanko and  
21 someone in the governor's office was  
22 actually a target or under suspicion,  
23 and what I'm asking you is, what's  
24 wrong with that? What's wrong with  
25 Evanko wanting to find out, after the

1 fact, whether or not the FBI  
2 investigation, he and the governor's  
3 office really were the target of the  
4 investigation? What's wrong with  
5 that?

6 A. A number of things. The first  
7 thing that comes to mind is that's  
8 really a matter that he needs to  
9 discuss with the FBI. Because I  
10 wasn't conducting the investigation.

11 Q. Well, but your reasons for not  
12 telling him about the case and your  
13 reasons for not letting Major Conley,  
14 the bureau director, know about it,  
15 was that the potential target was  
16 high-ranking members and someone  
17 supposedly in the governor's office.  
18 So what's wrong with after you've  
19 told Evanko that that's why you  
20 didn't tell him, what's wrong with  
21 him wanting to know whether that's  
22 true or not? What's wrong with him  
23 wanting to find out whether that's  
24 true?

25 A. But there's just no follow up.

1 That is the answer.

2 Q. I don't get your answer.

3 A. Managing that position  
4 politically ---.

5 ATTORNEY BAILEY:

6 Did you say wanting to  
7 know or to investigate?

8 ATTORNEY GUIDO:

9 I'm saying what's wrong  
10 with him --- it's two parts.

11 ATTORNEY BAILEY:

12 Wanting to know.

13 BY ATTORNEY GUIDO:

14 Q. One, what's wrong with him  
15 wanting to know whether you're  
16 telling him the truth? Is there  
17 anything wrong with him wanting to  
18 know whether you're telling him the  
19 truth about what happened?

20 A. We told him what happened.

21 Q. Right. But is there anything  
22 wrong with ---?

23 A. And we gave him a verbal  
24 report and gave him a written report.

25 Q. But what's wrong with him

1     wanting to find out whether or not  
2     you're telling him the truth?

3     A.       I don't understand the  
4     question about truth. It has nothing  
5     --- that's what happened.

6     Q.       Right. That's what you say  
7     happened. But what I'm saying is,  
8     Colonel Evanko wasn't there, he  
9     doesn't know what happened. What's  
10    wrong with him wanting to know  
11    whether what you say happened, in  
12    fact, happened?

13                    ATTORNEY BAILEY:

14                    You're suggesting that  
15                    you should investigate someone  
16                    simply because you don't like  
17                    hearing what they report, just  
18                    to investigate?

19                    ATTORNEY GUIDO:

20                    That's not what I'm  
21                    suggesting.

22                    BY ATTORNEY GUIDO:

23     Q.       What I'm saying is, what is  
24     wrong with --- you said that one of  
25     the illegal purposes here was to find

1 out, you know, whether, in fact,  
2 Evanko and someone in the governor's  
3 office was a target. I'm saying, you  
4 told him he was a target, but he  
5 doesn't know that. So what's wrong  
6 with Evanko wanting to find out and,  
7 in fact, investigating whether what  
8 you said is true, so that he knows  
9 whether that's right or not?

10 A. Well, as a practical matter, I  
11 would think that's something that, as  
12 the commissioner of the state police,  
13 he specifically wouldn't do to avoid  
14 the accusation that he has tried to  
15 influence.

16 Q. But the investigation's over.  
17 So what I'm saying is, after the  
18 fact, if at the time he was trying to  
19 do that, then I might see your point.  
20 But I'm saying, case closed, you've  
21 gone and told him. The case is  
22 closed.

23 A. I don't know that ---.

24 ATTORNEY BAILEY:

25 He doesn't know that,

1 the FBI said the case was  
2 closed. That's the trouble  
3 with too leading of questions  
4 here. He never said the case  
5 was closed. The FBI said the  
6 case was closed. Go to the  
7 FBI and find out. Investigate  
8 the FBI.

9 ATTORNEY GUIDO:

10 Well, as part of the  
11 investigation, they did go to  
12 the FBI.

13 ATTORNEY BAILEY:

14 A lot of people ought  
15 to investigate the FBI.

16 ATTORNEY GUIDO:

17 So what I'm saying  
18 is ---.

19 ATTORNEY BAILEY:

20 I'd like to investigate  
21 them.

22 ATTORNEY GUIDO:

23 I'm sure you would.

24 ATTORNEY BAILEY:

25 I sure would. I'd give

1 anything to get my hands on  
2 them.

3 BY ATTORNEY GUIDO:

4 Q. The bottom line --- okay. Just  
5 so I understand. The bottom line is,  
6 you told Evanko, yes, that such and  
7 such happened. So he has to take you  
8 at your word, in your opinion?

9 A. I don't think that's  
10 necessarily the case. He could have  
11 to me. Being, I think, a rational  
12 clinical way to handle it, would have  
13 just been to call me in and ask me.  
14 If he had any more questions, ask.

15 Q. He asked you. Right. Okay.  
16 He asked you ---.

17 A. But what he did was ---.

18 Q. Wait a second. Before you  
19 talk about what he did, what I'm  
20 saying is, if he doesn't necessarily  
21 believe you, what's wrong with him  
22 asking Major Werts and Williams, go  
23 out there, do an investigation, find  
24 out what happened, talk to the FBI,  
25 find out what they told him, talk to

1 Hickes, talk to all the people that  
2 were involved, find out for me what  
3 happened? If he doesn't necessarily  
4 believe you, then what's wrong with  
5 him doing that?

6 A. Because that's not what he  
7 did. I was named as the subject, as  
8 the focus of the investigation. This  
9 was never about what you just  
10 described, Ms. Guido. It was never  
11 about that. And no one can look at  
12 this and come to that conclusion. It  
13 would be very self-serving for you to  
14 believe that now. This investigation  
15 was handed to two of the highest-  
16 ranking members of the department.

17 I was put in an interrogation.  
18 I was named the subject. I was given  
19 my rights. This was an internal  
20 affairs investigation. This was  
21 never an investigation what you've  
22 just described. So I can't answer  
23 that question.

24 Q. If it was, though?

25 A. I'm not going to answer about

1 what - - - .

2 Q. There would be nothing wrong  
3 with that?

4 A. I've had so many  
5 hypotheticals, I don't know where to  
6 start and stop now. That's not what  
7 this was.

8 Q. In your opinion?

9 A. As a matter of fact, ma'am.

10 Q. In your opinion, that's not  
11 what this was; right?

12 ATTORNEY BAILEY:

13 Counsel, you're being  
14 argumentative. He's here as a  
15 fact witness. It's not  
16 important what he thinks about  
17 these things. What's  
18 important is - - - .

19 ATTORNEY GUIDO:

20 It is important what he  
21 thinks.

22 ATTORNEY BAILEY:

23 No, it's not important.  
24 It's important what - - - .

25 ATTORNEY GUIDO:

1 We can argue relevance  
2 later, sir.

3 ATTORNEY BAILEY:

4 It has nothing to do  
5 with relevance. That's not  
6 the issue, legally or  
7 factually.

8 ATTORNEY GUIDO:

9 Well, we'll argue about  
10 that later.

11 ATTORNEY BAILEY:

12 The fact is that Mr.  
13 Evanko did certain things.  
14 Certain things were done to  
15 him. He's testifying to  
16 certain fact things and he can  
17 respond to those kinds of  
18 questions. It's endless  
19 speculation to ask him what he  
20 thinks about what peoples'  
21 reasons were and, for that  
22 matter, what legal conclusions  
23 were. He's not a lawyer.

24 ATTORNEY GUIDO:

25 We'll argue about all

1           that later in court. I'm here  
2           to ask him questions. That's  
3           it. And we're going to take a  
4           break now for lunch.

5                     ATTORNEY BAILEY:

6                     What time do you want  
7           to come back?

8                     ATTORNEY GUIDO:

9                     How long do you need?

10                    ATTORNEY BAILEY:

11                    Well, I don't know.  
12           Were you hoping to finish up  
13           today? I'm going to have ---.

14                    ATTORNEY GUIDO:

15                    Hoping.

16                    ATTORNEY BAILEY:

17                    Hoping to?

18                    ATTORNEY GUIDO:

19                    Yes.

20                    ATTORNEY BAILEY:

21                    I'm going to have some  
22           questions probably. Maybe we  
23           need to think about another  
24           day or continuation.

25                    ATTORNEY GUIDO:

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1 Well, I'd like to do as  
2 long as we can today.

3 ATTORNEY BAILEY:

4 Yes. That's all right.  
5 We can do that.

6 ATTORNEY GUIDO:

7 Okay. That's no  
8 problem.

9 OFF RECORD DISCUSSION

10 ATTORNEY BAILEY:

11 Why don't we just go  
12 ahead and take an hour? Is  
13 that okay?

14 ATTORNEY GUIDO:

15 That's fine. Yes. I  
16 don't have a problem with  
17 that.

18 MS. LYDE:

19 It's 11:48 a.m. We'll  
20 take an hour break for lunch.

21 SHORT BREAK TAKEN

22 ATTORNEY BAILEY:

23 Please be advised  
24 there's a tape recording  
25 device in operation.

1 MS. LYDE:

2 1:03 p.m., we're back  
3 on video.

4 COURT REPORTER:

5 You're still under  
6 oath, Mr. Ober.

7 BY ATTORNEY GUIDO:

8 Q. This morning at one point you  
9 had asked me to come back to whether  
10 or not if you remember anybody else  
11 who told you that Evanko asked  
12 Campbell's permission. And I was  
13 wondering since you've had the lunch  
14 break, I'd come back to that. Do you  
15 happen to remember anybody else who  
16 may have told you that?

17 A. No. I actually didn't give  
18 that any thought, but I will try to  
19 do that.

20 Q. And also, I did want to follow  
21 up one thing on that because I can't  
22 remember if I asked you. And that  
23 was, you heard it from either Major  
24 Morris or Lieutenant Colonel Hickes  
25 or perhaps both of them, that Evanko

1 had asked for Campbell's permission.

2 Do you remember if they told you how  
3 they knew that?

4 A. No. No, I don't recall how  
5 they knew that.

6 ATTORNEY GUIDO:

7 Okay. I guess we need  
8 --- do you have the exhibits  
9 still? Because I think  
10 Exhibit Three was what we were  
11 --- I just wanted to give him  
12 the copy of the Complaint  
13 again so that we could follow  
14 along where we left off.

15 Thank you.

16 BY ATTORNEY GUIDO:

17 Q. Paragraph 42 or we'll pick up  
18 at paragraph 42. Let me look. I  
19 think we covered what was in the  
20 other paragraphs. In paragraph 42  
21 you talk about the two PSP --- you  
22 say two PSP majors conducted a  
23 custodial interview of the Plaintiff.  
24 What do you mean by a custodial  
25 interview?

1 A. I mean that I was called by  
2 two PSP majors, sat down in the  
3 deputy commissioner of  
4 administration's office, read my  
5 Garrity warnings and notification of  
6 inquiry, and I was told, as the  
7 documents indicate, I was being  
8 compelled to participate in that  
9 interview.

10 Q. What's a Garrity warning?

11 A. Garrity warnings are warnings  
12 that are issued to subjects of  
13 internal affairs investigations that  
14 puts the bright line between their  
15 criminal liability and their  
16 administrative liability, with  
17 respect to what statements can be  
18 used against them - - - .

19 Q. And Garrity warnings are given  
20 when it's not going to be a criminal  
21 investigation; is that right?

22 A. Correct.

23 Q. And I think my recollection of  
24 Garrity is that, in fact, anything  
25 that you were to say in that

1 compelled interview, could not be  
2 used later in a criminal proceeding;  
3 is that correct?

4 A. That's correct.

5 Q. And those Garrity warnings,  
6 they're given on a standard form?

7 A. Yes.

8 Q. And that form is used in  
9 virtually every internal affairs  
10 investigation?

11 A. I would assume so, yes.

12 Q. Okay. And have you contacted  
13 those same type of interviews before?

14 A. Yes.

15 Q. An administrative interview  
16 with Garrity warnings?

17 A. I've conducted internal  
18 affairs investigations and issued  
19 administrative warnings, yes.

20 Q. And you would issue the  
21 administrative warnings to everybody  
22 you interviewed or to who?

23 A. Subjects.

24 Q. The subject of the  
25 investigation?

1 A. Subjects and anyone that  
2 potentially could be a subject.

3 Q. Now, you said it's a custodial  
4 interview. You weren't under arrest;  
5 were you?

6 A. No.

7 Q. Well, how were you in custody?

8 A. I was in custody by the mere  
9 fact that I was being compelled to  
10 participate or face disciplinary  
11 action if I didn't. Leaving the room  
12 would have not been cooperating.

13 Q. Right. You could have left  
14 the room; correct?

15 A. And suffered the  
16 administrative consequences, yes.

17 Q. Right. You could have been  
18 disciplined for leaving the room?

19 A. I could have been disciplined  
20 for not participating in the  
21 investigation,

22 Q. Okay. But if you had left the  
23 room, nobody was going to handcuff  
24 you and throw you back in the room;  
25 correct?

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1 A. After two years, ma'am, I  
2 don't know that I would make that  
3 statement.

4 Q. You had no reason at the time  
5 to believe you were under arrest; did  
6 you?

7 A. I was not under arrest.

8 Q. Okay. And you weren't given  
9 any kind of Miranda warnings?

10 A. No, I was not.

11 Q. I think you --- I know that  
12 you've been interviewed before in  
13 other administrative investigations;  
14 is that right?

15 A. Correct.

16 Q. And previously been given your  
17 Garrity warnings; correct?

18 A. Yes.

19 Q. What was different about this  
20 interview that made it a custodial  
21 interview, as compared to the other  
22 interviews that you went through  
23 before?

24 ATTORNEY BAILEY:

25 I want to object. You

1 can go ahead and respond, if  
2 you know. I'd just remind  
3 Counsel, he is not an  
4 attorney. And I think you're  
5 asking for a legal definition.

6 You can go ahead and respond,  
7 Mr. Ober.

8 A. Well, I think that's just  
9 about where I was going to go. Not  
10 having ---.

11 BY ATTORNEY GUIDO:

12 Q. How long have you been a state  
13 trooper?

14 A. Twenty (20) years.

15 Q. And you've done, I think you  
16 said, hundreds of criminal  
17 investigations?

18 A. Probably.

19 Q. And you don't understand the  
20 term, custodial interview?

21 A. I didn't say I didn't  
22 understand the term, ma'am.

23 Q. Okay. I thought that was the  
24 objection that the term --- that  
25 since you weren't a lawyer, you

1 didn't know what the term, custodial  
2 interview meant. But being a state  
3 trooper all these years, you do know  
4 what a custodial interview is; don't  
5 you?

6 A. I believe I do.

7 Q. Okay. Were the other  
8 interviews that were conducted in the  
9 past administrative investigations in  
10 which you were a subject, were those  
11 interviews also custodial interviews?

12 ATTORNEY BAILEY:

13 Again, I'm going to  
14 object. Let me just --- so I  
15 don't have to object anymore.  
16 I object to having, or at  
17 least attempting to elicit  
18 from the Deponee, what amounts  
19 to a legal definition. Maybe  
20 I don't understand what a  
21 custodial interview is, but an  
22 example, in a great deal of  
23 school law, custodial  
24 interviews can be conducted at  
25 schools of children. They're

1 not under arrest. But they  
2 are coercive in the sense that  
3 the person is unfree to leave  
4 or go.

5 So I would defer to  
6 you, Counsel, and I'm not  
7 trying to be argumentative,  
8 but I wrote the Complaint and  
9 he's not an attorney. With  
10 that in mind, I'll just have a  
11 standing objection. I won't  
12 interrupt you anymore and you  
13 may respond to her questions.

14 A. Well, in my mind, what  
15 separates this interview from any one  
16 I've ever been involved in, was the  
17 whole context of the interview. And  
18 considering the context and the form  
19 and content of the interview, made it  
20 a unique experience for me. And made  
21 it custodial in that sense that I was  
22 compelled to participate. Had I not  
23 participated, I would suffer  
24 disciplinary actions. That is also  
25 true of the other investigations I

1 was involved in. But in this  
2 particular one, I was being  
3 interviewed by two majors in the  
4 deputy commissioner of  
5 administration's office, without any  
6 advanced warning as our regulations  
7 and our labor contract affords me the  
8 opportunity. Taking all of these  
9 things into consideration, it was  
10 tantamount to a custodial situation,  
11 in my mind, in that I was not free to  
12 leave and I was not free to say, you  
13 have no complaint, see you. And I  
14 did raise those objections to the  
15 people interviewing me.

16 BY ATTORNEY GUIDO:

17 Q. You did --- every interview  
18 you ever conducted for internal-type  
19 investigations, those are always ---  
20 the member of the state police is  
21 always required to answer; isn't he?

22 A. Right.

23 Q. He or she is always required  
24 to answer?

25 A. Yes.

1 Q. And to always be subject to  
2 discipline if they aren't; is that  
3 right?

4 A. Yes.

5 Q. And you've conducted many of  
6 those kinds of interviews yourself?

7 A. Some, yes. But there's a big  
8 difference between those, ma'am. In  
9 every other instance, but mine, there  
10 was a reason to conduct an  
11 investigation. There was a  
12 complaint. There was an allegation  
13 of misconduct. I have never been a  
14 part of and never issued warnings to  
15 someone willy-nilly, simply hoping to  
16 find something that they did wrong or  
17 tell them that we're to conduct an  
18 investigation, review it, and if we  
19 find misconduct, then conduct an  
20 internal affairs investigation. That  
21 I have never been a part of.

22 Q. Okay. I think you mentioned  
23 something about your union  
24 representative. You did have union  
25 representation; correct?

1 A. Yes, I did. I was not  
2 afforded --- what I had indicated was  
3 I was not afforded the opportunity to  
4 provide one in advance.

5 Q. Okay. How is that supposed to  
6 work?

7 A. That's supposed to work pretty  
8 much as I've just described. Unless  
9 there's exigent circumstances,  
10 subjects are to be notified in  
11 advance of an interview and afforded  
12 the opportunity to provide either a  
13 PST representative or counsel.

14 Q. When were you notified of the  
15 interview?

16 A. That day I received a phone  
17 call from Colonel Coury's secretary  
18 and said --- I was at my office at  
19 the IIMS building, strategic  
20 development building.

21 ATTORNEY BAILEY:

22 Is that IIMS?

23 A. IIMS, correct.

24 ATTORNEY BAILEY:

25 Okay.

1 A. Which is detached from  
2 headquarters, and told to be over at  
3 headquarters in Colonel Coury's  
4 office in ten minutes. Excuse me,  
5 she asked me how long it would take  
6 to get there and I said, I guess, ten  
7 minutes.

8 BY ATTORNEY GUIDO:

9 Q. Was that the first that you  
10 knew of the --- well, first, was it  
11 the first you knew about the  
12 administrative inquiry that was being  
13 conducted?

14 A. Yes.

15 Q. Did you get some ---?

16 ATTORNEY BAILEY:

17 Were you told of the  
18 purpose to be at the office  
19 for?

20 A. No.

21 ATTORNEY BAILEY:

22 Well, then ---.

23 ATTORNEY GUIDO:

24 But that's what I was  
25 just getting ---.

1 ATTORNEY BAILEY:

2 The question was, was  
3 that the first you knew.  
4 Obviously, at the point you  
5 received the telephone call,  
6 you didn't know. Is your  
7 testimony that you didn't know  
8 until you got to the office?

9 A. That's correct.

10 ATTORNEY BAILEY:

11 All right.

12 A. I was called and told to  
13 report.

14 ATTORNEY GUIDO:

15 Maybe I'll just have to  
16 depose you. It might be  
17 easier.

18 ATTORNEY BAILEY:

19 That's all right. I'd  
20 be very happy to answer your  
21 questions.

22 ATTORNEY GUIDO:

23 It might be easier.

24 A. I didn't understand.

25 ATTORNEY BAILEY:

1 I know you didn't.

2 That's why I ---.

3 ATTORNEY GUIDO:

4 Just ask me if you  
5 don't understand.

6 A. Well, I guess I did. The  
7 first time I knew about it is when  
8 they sat me down.

9 BY ATTORNEY GUIDO:

10 Q. When they sat you down, what  
11 happened?

12 A. They sat me down and told me  
13 that I was there --- they were  
14 ordered by Colonel Evanko to conduct  
15 an administrative inquiry into the  
16 facts surrounding the FBI probe that  
17 was conducted in western  
18 Pennsylvania.

19 Q. At that time did they tell you  
20 that you were the subject of the  
21 inquiry?

22 A. I don't recall. Yes, they  
23 did, as a matter of fact.

24 Q. Do you remember who said what  
25 about that?

1 A. Well, what I recall then is my  
2 inquiry as to what's the allegation  
3 of misconduct. And several times I  
4 asked that question and several times  
5 I was told there is no allegation of  
6 misconduct. And then I said, why am  
7 I here? They said, well, we're  
8 conducting this inquiry. And I said,  
9 into what? And they repeated  
10 basically what I've said. And I  
11 said, well, I've already briefed the  
12 commissioner --- Colonel Evanko, and  
13 I've already briefed him. I already  
14 supplied him a memo. I don't know  
15 what else there would be --- what  
16 there would be to investigate.

17 And they were very persistent.  
18 And at one point I said to Major  
19 Williams, I said, well, I guess  
20 you're just doing your job and he  
21 said, I guess so. I said, well, if  
22 you don't have an allegation of  
23 misconduct, then this is a witch hunt  
24 and you can't do this. I was very  
25 emphatic with them. I said, you

1 can't do this, you don't have a  
2 reason for me to be here and keep me  
3 here. And their response was and  
4 Major Williams' response was and  
5 Major Werts, non-verbal head nods  
6 were that --- he kept repeating, we  
7 are not conducting an investigation.  
8 We are gathering the facts. We are  
9 making no recommendation. We're  
10 going to supply that to Colonel  
11 Evanko. And if, on his review, if he  
12 believes misconduct occurred, then  
13 he's going to order an internal  
14 affairs investigation.

15 Q. Okay.

16 A. And I said this makes no  
17 sense. I'm the director. And I  
18 recall this, of all the things you've  
19 asked me to recall, I will tell you,  
20 I recall this the best. Because I  
21 was absolutely floored. I said I'm  
22 the director of the internal affairs  
23 division, albeit detached. I'm  
24 telling you, you can't do this. You  
25 can't interview me, put me in this

1 situation, without an allegation.

2 And with that, they slid a  
3 notification of inquiry in front of  
4 me that had been custom-made to fit  
5 this circumstance, because the  
6 standard reporting procedures and  
7 blocks to check off didn't fit. So  
8 they X'd out attorney work product by  
9 the order of chief counsel and  
10 inserted Commissioner Evanko's ---.

11 I don't have the form in front of me.

12 Q. Do you want me to see if I can  
13 find it so that you can explain what  
14 you're ---?

15 A. That would be very helpful.

16 Q. Yes.

17 A. Do you remember the MASH  
18 episode when they erased machine gun  
19 and inserted microwave? Well, that's  
20 what they did.

21 Q. I think I've seen almost all  
22 of them and I can't remember that  
23 MASH.

24 A. Well, that's what this  
25 reminded me of.

1 Q. Let me see if I can find that,  
2 because it will be helpful to me if  
3 you can show me on the form what's  
4 changed. Exhibit Eight, is this the  
5 notification of inquiry; is that the  
6 right document that we were  
7 discussing?

8 A. Yes, ma'am.

9 (Deposition  
10 Exhibit Number Eight  
11 marked for  
12 identification.)

13 ATTORNEY BAILEY:

14 Have you got a number  
15 ---? What is the number of  
16 that, Eight?

17 ATTORNEY GUIDO:

18 That's Eight.

19 A. Eight.

20 ATTORNEY BAILEY

21 Thank you.

22 BY ATTORNEY GUIDO:

23 Q. And you were talking about  
24 there something be wrong with it.  
25 Could you explain what you were

1 talking about? It's easier to  
2 understand with you looking at the  
3 document.

4 A. I'm looking at Exhibit Eight  
5 and I note that ---.

6 ATTORNEY BAILEY:

7 Wait, stop, hold it.

8 Thank you. Syndi, could you  
9 repeat your question, please.

10 ATTORNEY GUIDO:

11 Yes.

12 BY ATTORNEY GUIDO:

13 Q. You were saying that the  
14 document had been changed. In order  
15 to understand your response that you  
16 were giving, I think it's helpful if  
17 you point out what you're talking  
18 about in the document for me, which  
19 is now Exhibit Eight?

20 A. Well, I was just noting that  
21 when the document was presented to  
22 me, I could see the obvious  
23 alterations to it, in that it had  
24 been customized by X'ing out, I  
25 think, office of chief counsel, and

1 inserting commissioner. Also note  
2 that there is no BPR control number  
3 assigned to it and I inquired about  
4 that. When a complaint is received,  
5 there's a sequential number issued at  
6 that point in time when it's  
7 received.

8 And I also noted that by  
9 virtue of the fact that this was  
10 being presented to me as the note  
11 says, it's provided to the --- a copy  
12 is provided to the subject of the  
13 investigation. And that's what I  
14 asked them. I said, what is the  
15 allegation of misconduct? They kept  
16 insisting this administrative inquiry  
17 had some legitimacy, to which I then  
18 responded, again, I'm the director of  
19 internal affairs, where is  
20 administrative inquiry and its  
21 processes and my rights defined?  
22 Because I've never heard of it.

23 Q. What did they tell you about  
24 why there wasn't a BPR number? You  
25 said you asked about the BPR number.

1 A. I asked and the response that  
2 I initially received was, well,  
3 they're not conducting an internal  
4 affairs investigation. It's an  
5 administrative inquiry.

6 Q. Do you know whether or not  
7 there was, in fact, a BPR number?

8 A. Yes, there was.

9 Q. Do you know when that was  
10 issued?

11 A. No, I do not.

12 Q. So you don't recall off the  
13 top of your head whether the BPR  
14 number was issued before or after  
15 this interview was conducted?

16 A. Well, by deduction, it was  
17 issued considerably after this.  
18 Because the number that was assigned  
19 to it, I believe is 503. The  
20 administrative --- the supervisory  
21 inquiry that they put me through  
22 three or four months later was issued  
23 number 409. So the number was  
24 assigned at least after then.

25 Q. Okay. 503.

1 A. I was interviewed in  
2 September. So it would have most  
3 likely been sometime after then, I'm  
4 guessing.

5 Q. I think you were interviewed  
6 in June; weren't you?

7 A. No, I mean, for the  
8 administrative.

9 Q. Okay.

10 A. The other ---.

11 Q. I'm sorry. So this interview  
12 was in June of '99; right?

13 A. Yes.

14 Q. So at that point you said ---  
15 I'm trying to remember. At the  
16 beginning of the interview, you had  
17 not been given the notification of  
18 inquiry; right?

19 A. Oh, yes, I had been.

20 Q. I thought you had said that  
21 they talked to you and then at one  
22 point they slipped it under your  
23 nose?

24 A. Well, when we first sat down,  
25 all of these things I've described,

1 this was the exchange between the  
2 three of us. And when it became  
3 obvious that they were going to do  
4 this over my objections and despite  
5 my objections, it was, okay, let's  
6 get started.

7 Q. Okay.

8 A. And at that point, I asked for  
9 a PSTA representative.

10 Q. At the point that you realized  
11 that the interview was going to go  
12 forward?

13 A. At the point where I realized  
14 this is going to happen.

15 ATTORNEY BAILEY:

16 I think her question  
17 was, when this Exhibit Number  
18 Eight was given to you.

19 A. Well, it was before the  
20 interview.

21 BY ATTORNEY GUIDO:

22 Q. Okay. But then you went ---  
23 after you got Exhibit Number Eight,  
24 then you asked for a union --- PSTA,  
25 that's the union; right?

1 A. Yes.

2 Q. Is there a difference?

3 A. No. I assumed that it would  
4 have been before, because the rep was  
5 there when this was issued.

6 Q. Okay.

7 A. At some point - - - .

8 ATTORNEY BAILEY:

9 I guess you mean  
10 Exhibit Number Eight?

11 A. Exhibit Number Eight.

12 ATTORNEY GUIDO:

13 That's what I was  
14 confused about.

15 ATTORNEY BAILEY:

16 Right.

17 A. I asked for a representative  
18 and one was provided for me. And  
19 then, I'm guessing this document was  
20 executed, because a PSTA rep's name  
21 was on it. I signed it also.

22 BY ATTORNEY GUIDO:

23 Q. And that would be Trooper  
24 Thomas Carr?

25 A. Correct.

1 Q. In an administrative  
2 interview, the member of the state  
3 police, and this time being you, but  
4 as a general rule, you don't have a  
5 right to have a lawyer there; right?

6 A. I'm sorry. What was your  
7 question?

8 Q. Do you have a right to have a  
9 lawyer in an administrative  
10 interview? You said you had the  
11 right to have a union rep. I was  
12 wondering about lawyers. Do you have  
13 ---?

14 A. Yes. If the subject requests  
15 one and a reasonable time was  
16 afforded for them to obtain one,  
17 I've never known of one that's  
18 request has been refused. I don't  
19 know that it rises to the level of a  
20 right. I believe if the member would  
21 exercise that, he would be entitled  
22 to one, yes, ma'am. Had I had any  
23 idea what I was in for, I assure you,  
24 and been given the opportunity, I  
25 would have had counsel with me.

1 Q. Okay.

2 ATTORNEY BAILEY:

3 I think the only  
4 objection I've ever seen was,  
5 you can't have both.

6 ATTORNEY GUIDO:

7 Okay. I didn't know.

8 ATTORNEY BAILEY:

9 I'm not sure either.

10 ATTORNEY GUIDO:

11 I mean, I'm just asking  
12 you because I don't know the  
13 answer.

14 ATTORNEY BAILEY:

15 Maybe Joanne would  
16 know. Do you know whether  
17 it's --- you don't know?

18 ATTORNEY REYNOLDS:

19 I would need to call.

20 I don't know.

21 ATTORNEY BAILEY:

22 Okay.

23 BY ATTORNEY GUIDO:

24 Q. Before the interview, were you  
25 --- well, at the time of the

1 interview, were you armed? In other  
2 words, did they make you surrender  
3 your firearm?

4 A. No. I was not required to  
5 surrender any firearm.

6 Q. That's what I was wondering.

7 A. That would have been  
8 --- no, I was not required.

9 Q. And were you told that this  
10 was strictly an administrative  
11 interview?

12 A. That's what I was told, it's  
13 an administrative inquiry.

14 Q. And did you have any concerns  
15 that there was somehow criminal  
16 allegations at issue?

17 A. At that point, no.

18 Q. Okay.

19 A. When the interview started,  
20 ma'am, no.

21 Q. Okay. During the course of  
22 the interview did you become  
23 concerned?

24 A. At some point in time, I  
25 became concerned that experiencing

1     what I've experienced, that there  
2     could be criminal charges that were  
3     at least being evaluated against me.

4     Q.         What caused you to become  
5     concerned about that during the  
6     interview?

7     A.         The irrational nature of this  
8     whole thing.

9     Q.         Well, what was --- why don't  
10    you just tell me what about the  
11    interview itself? You talked about  
12    the nature of the questions, et  
13    cetera. Can you describe in a little  
14    bit more specifics for me?

15    A.         Sure. During the interview,  
16    it became obvious --- well, it was  
17    obvious at the onset of the  
18    interview, that any rational  
19    explanations were going to be  
20    completely overlooked and that this  
21    was an exercise in finding  
22    wrongdoing. I was very --- I became  
23    concerned that in this exercise of  
24    conducting this witch hunt for  
25    wrongdoing, that if given the

1 opportunity, that the department  
2 might try to conjure up a criminal  
3 charge against me.

4 Q. What were you asked by either  
5 Major Werts or Major Williams that  
6 made you think that?

7 A. The whole interview, ma'am.  
8 This whole business is rotten to the  
9 core. I had no assurance and no  
10 faith that this interview and this  
11 process was going to be a fair  
12 objective and impartial one and yield  
13 an objective result.

14 Q. Did it have anything to do  
15 with either Major Werts or Major  
16 Williams?

17 A. No. I viewed their roles as  
18 messengers.

19 Q. Okay. Did you know both of  
20 those majors?

21 A. Know them in what capacity?  
22 Know who they are, yes. Work with  
23 them, Major Werts, never, Major  
24 Williams, yes. We shared at least  
25 one project that comes to mind. So

1 business-type relationship, yes,  
2 ma'am.

3 Q. My recollection from Major  
4 Williams' deposition was that he said  
5 that he thought well of you. So  
6 that's why I wondered if you knew him  
7 from the past?

8 A. Yes. We had worked on a  
9 project together. I believe it was a  
10 legislative budget and finance  
11 committee report, I think.

12 Q. And as far as you knew, there  
13 wasn't any bad blood between you or  
14 anything like that; was there?

15 A. Not to my knowledge.

16 Q. Okay. Now, you've described  
17 this as being different from any  
18 other administrative inquiries that  
19 you've been involved in as, at least  
20 as a subject or a witness, as opposed  
21 to doing the investigation?

22 A. Yes.

23 Q. The 1994 investigation that  
24 was initiated by Commissioner Walp,  
25 that involved the Lykens Station; is

1       that correct?

2       A.           Yes.

3       Q.           What was the --- what did that  
4       stem from?

5       A.           There was an allegation. This  
6       was --- let me start again. When I  
7       was assigned to the systems and  
8       process review division, the  
9       inspection division, there was an  
10      allegation made against --- I don't  
11      know if there were other subjects,  
12      other than myself or not. I believe  
13      I was the only subject, as I recall.  
14      But there was an allegation made by  
15      the station commander that I had  
16      issued him inappropriate orders and  
17      that I had forced him to break open  
18      desks or one desk. As I recall,  
19      that's what the essence of the issue  
20      was.

21      Q.           And was the basic issue  
22      whether or not you had exercised your  
23      judgment appropriately during the  
24      inspection of that station?

25      A.           No. The issue is what I just

1 described, that I gave him an  
2 inappropriate order. This is what I  
3 recall from my interview with then  
4 Captain Capriotti (phonetic), is that  
5 I ordered him, outside of his chain  
6 of command, to break open desks to  
7 retrieve items that were missing.  
8 And I now recall that there was a  
9 second leg to that, I believe, in  
10 that I ordered a binder be returned.  
11 When I left that station I  
12 inadvertently left a binder of  
13 information behind. And it was  
14 relayed to Harrisburg that I  
15 inappropriately had ordered him to  
16 have that relayed down there by  
17 shorting his patrol shifts for  
18 coverage that night.

19 Q. Do you remember whether the  
20 allegation was that your orders were  
21 inappropriate or whether you actually  
22 gave them? Do you understand the  
23 difference?

24 A. Yeah. But do you know what  
25 would be helpful, if you have the

1 investigation, we can just take a  
2 look at it to what the allegation  
3 was.

4 Q. Let's see if I do.

5 ATTORNEY BAILEY:

6 Let me place an  
7 objection on the record to  
8 relevancy. You may respond.

9 COURT REPORTER:

10 Number Nine.

11 (Deposition

12 Exhibit Number Nine  
13 marked for

14 identification.)

15 A. I believe that answers the  
16 question then. There's an allegation  
17 of criminal conduct.

18 BY ATTORNEY GUIDO:

19 Q. Well, what I didn't, I guess,  
20 what I didn't understand is whether  
21 from your answer that you said that  
22 it didn't involve your judgment. I  
23 didn't know whether you were saying  
24 that the allegation was --- because  
25 if the question is whether or not it

1 was appropriate for you to order the  
2 desk to be opened, that would be  
3 judgment. On the other hand, if the  
4 question was whether you had, in  
5 fact, ordered anyone to open the  
6 desk, that would be a factual issue.  
7 So I was wondering if you know  
8 whether the issue is, did you really  
9 order it or was it appropriate for  
10 you to order it?

11 A. What I remember is that was an  
12 issue that was explored, the  
13 appropriateness of that order,  
14 because that is governed by  
15 regulation. A headquarters  
16 lieutenant would not have the  
17 authority to order, without going  
18 through that member's chain of  
19 command, absent exigent  
20 circumstances, to do much of  
21 anything. I remember that issue  
22 being explored. But now that you've  
23 shared this with me, I do recall now  
24 the allegation of criminal conduct,  
25 which is what apparently triggered

1 the investigation.

2 ATTORNEY BAILEY:

3 What was the  
4 disposition of this, Counsel?

5 ATTORNEY GUIDO:

6 Unfounded.

7 ATTORNEY BAILEY:

8 Unfounded.

9 ATTORNEY GUIDO:

10 I thought we had  
11 established that earlier.

12 ATTORNEY BAILEY:

13 I wasn't sure. I just  
14 want to make sure the record's  
15 clear.

16 BY ATTORNEY GUIDO:

17 Q. I think I'm still a little  
18 confused. Did you order the desk to  
19 be broken into or not?

20 A. No.

21 Q. Okay. That answers my  
22 question that I was having trouble  
23 with. When the desk was opened,  
24 though, did you find --- were there  
25 drugs or drug paraphernalia that was

1 found in the desk; do you recall?

2 ATTORNEY BAILEY:

3 Are you asking him to  
4 re-visit the underlying  
5 histories, back histories  
6 here?

7 ATTORNEY GUIDO:

8 Just that one fact.

9 ATTORNEY BAILEY:

10 Well, I'm going to  
11 place an objection on the  
12 record, but I'm going to let  
13 him answer it. You have an  
14 investigation that was  
15 unfounded. The investigation  
16 and his comments speak for  
17 themselves. If you want to  
18 let him review the contents of  
19 the investigation, let him  
20 comment on them, that's fine.  
21 I'm going to place the  
22 objection on the record. I'm  
23 going to permit him to  
24 respond,  
25 if he recollects.

1 A. Well, looking at Exhibit Nine,  
2 Counsel, I don't recall the details.  
3 This is so long ago.

4 BY ATTORNEY GUIDO:

5 Q. Okay.

6 A. Apparently, we found drug  
7 paraphernalia, yes.

8 Q. And I'm not meaning to imply  
9 that you did anything wrong here.  
10 What I was asking, so the drug  
11 paraphernalia was found and then did  
12 you report that to someone?

13 A. Yes.

14 Q. And who would you have  
15 reported to?

16 A. The station commander.

17 Q. To the station commander  
18 there?

19 A. Yes.

20 Q. Would you also report that to  
21 your immediate supervisor?

22 A. I'm sure I did.

23 Q. Do you know who was your  
24 supervisor at that point in time?

25 A. Yes. Major --- then Captain

1 DeWire.

2 ATTORNEY BAILEY:

3 Can you spell DeWire  
4 for the record?

5 A. D-E-W-I-R-E.

6 ATTORNEY BAILEY:

7 A capital W or small?

8 A. Capital W.

9 ATTORNEY BAILEY:

10 Thank you.

11 BY ATTORNEY GUIDO:

12 Q. The interview that was  
13 conducted in respect to that  
14 investigation, it differed from this  
15 one in what way?

16 ATTORNEY BAILEY:

17 Objection. You may  
18 respond.

19 BY ATTORNEY GUIDO:

20 Q. The one on June 28th.

21 ATTORNEY BAILEY:

22 Objection. You may  
23 respond.

24 A. I think I've already answered  
25 that.

1 BY ATTORNEY GUIDO:

2 Q. Maybe I didn't follow. I'm  
3 sorry.

4 A. Maybe we need it read back  
5 then. This interview that I --- the  
6 interview with Werts and Williams?

7 Q. Yes.

8 A. Differed from this and every  
9 other investigation interview that  
10 I've ever been involved in, in that  
11 there was no legitimate, rational  
12 basis to be there, because there was  
13 no allegation of misconduct. There  
14 was no complaint sheet indicating  
15 there was misconduct. There was no  
16 legal way to put this into an  
17 internal affairs environment where my  
18 rights are invoked. So there was  
19 nothing about this that was the same.  
20 There was no nexus for this.

21 Q. Okay. So what led up to you  
22 being investigated was different.  
23 But as far as the just procedural  
24 aspects of the interview, the Garrity  
25 warnings, the union representation,

1 interview being tape-recorded, et  
2 cetera, were all the procedural  
3 aspects done, just like every other  
4 administrative interview?

5 A. No.

6 ATTORNEY BAILEY:

7 Objection, objection,  
8 objection. You may respond.

9 A. No, of course, they weren't.  
10 I've already testified to that. I  
11 was not given notification in  
12 advance, which I was in this case.

13 BY ATTORNEY GUIDO:

14 Q. Okay.

15 A. And in this case, Major, then  
16 Captain Capriotti, called me, I was  
17 at the Milton Station, to arrange a  
18 date and a time in advance. I was  
19 afforded then an opportunity to  
20 provide a PSTA representative. I'm  
21 assuming that all of the other  
22 procedures were followed. I can't  
23 sit here and recall that they were or  
24 weren't, with respect to issuance of  
25 control numbers and what have you.

1 So far, the only thing that I can  
2 tell you was the same is the fact  
3 that I was issued my warnings.

4 Q. I'm sorry. Do you know  
5 whether as part of the administrative  
6 inquiry, and I'm talking about this  
7 one in the summer of 1999 for which  
8 you were being interviewed on that  
9 day, do you know whether or not  
10 Lieutenant Colonel Hickes was also  
11 interviewed?

12 A. Yes. I do know that he was  
13 interviewed.

14 Q. Do you know if any other  
15 members of the state police were  
16 interviewed?

17 A. When I was interviewed, Major  
18 Werts and Williams told me that they  
19 had interviewed Hickes. And I  
20 believe Major Merryman was  
21 interviewed, but I don't recall  
22 whether they told me that or not.  
23 That's the only ones I know of.

24 Q. Okay. Do you know whether or  
25 not the commissioner was also

1     subjected to an interview?   If you  
2     know.

3     A.       At that time, no.   I'm  
4     thinking that that has come out  
5     during this litigation.   But at that  
6     time, no, I don't know whether he was  
7     interviewed or not.

8     Q.       And do you know whether or not  
9     Lieutenant Colonel Coury was also  
10    interviewed?

11   A.       I don't know.

12                   ATTORNEY BAILEY:

13               Did the commissioner  
14           interview himself?   I only ask  
15           that, Syndi, Exhibit Number  
16           Eight says request from the  
17           commissioner.   So I assume he  
18           requested an interview for  
19           himself?

20                   ATTORNEY GUIDO:

21               Exhibit Number Eight is  
22           --- I see what you're saying.  
23           Okay.

24                   BY ATTORNEY GUIDO:

25   Q.       No.   I'm just asking, do you

1 know if he was interviewed? And you  
2 said you think you've heard that, but  
3 maybe through this litigation?

4 A. Yes. At that time, no, I did  
5 not know that. But I'm thinking that  
6 came up during a deposition or  
7 something during this process. I  
8 think maybe Major Williams mentioned  
9 that, but I don't recall now.

10 Q. Now, in paragraph 43, you've  
11 alleged that Lieutenant Colonel Coury  
12 blocked your promotional  
13 opportunities. What promotional  
14 opportunities did Lieutenant Colonel  
15 Coury block?

16 A. So far, I would say that he  
17 has blocked my promotion, promotional  
18 opportunity to the Bureau of  
19 Professional Responsibility, as well  
20 as the Bureau of Liquor Control  
21 Enforcement.

22 Q. What promotion to the Bureau  
23 of Professional Responsibility?

24 A. The bureau director's  
25 position, the rank of major.

1 Q. Would that be at the time ---  
2 you mean to replace Conley?

3 A. Yes.

4 Q. Okay. And do you know when  
5 that was? I really don't know how  
6 long ago Colonel Conley was promoted.

7 A. Well, with all the dates  
8 floating around, ma'am, I can't  
9 recall.

10 Q. But to give us some context,  
11 Major Conley was still a major at the  
12 time that Colonel Evanko ordered the  
13 administrative inquiry in the summer  
14 of 1999?

15 A. '98 --- '99, correct. You're  
16 right.

17 Q. And at some point after that,  
18 he was promoted to lieutenant  
19 colonel?

20 A. Yes.

21 Q. So the bureau director  
22 position opened up again?

23 A. Yes.

24 Q. And that's the one that you  
25 had applied for that or what

1       happened?

2       A.           No.     There's no need to apply.  
3       I completed --- I participated in a  
4       competitive exam process.

5       Q.           And how do you know that  
6       Lieutenant Colonel Coury blocked your  
7       promotional opportunity, kept you  
8       from being promoted to director of  
9       the BPR?

10      A.           Well, by deduction, and having  
11     been involved in this fiasco for two  
12     years, as was the case then and now,  
13     I'm the only individual on this  
14     planet who has been in charge of both  
15     of the divisions that comprise BPR.  
16     So by simple logic, I have to deduce  
17     that the only legitimate reason for  
18     me not being offered that promotional  
19     opportunity is as a result of the  
20     actions by the Defendants to include  
21     Coury.    I'm senior to probably 90  
22     percent of the captains in this state  
23     right now.   I've been a captain for  
24     six years, almost seven years.

25      Q.           The decision about who to put

1 in charge of that bureau, would that  
2 be Lieutenant Colonel Coury's  
3 decision to make?

4 A. Well, I believe that according  
5 to what Colonel Coury has told me in  
6 the past, there's an exchange of  
7 information. There's a discussion  
8 amongst the deputies, particularly,  
9 the deputy who was most affected by  
10 that position and a recommendation  
11 made.

12 Q. But do you have first-hand  
13 knowledge that Lieutenant Colonel  
14 Coury did anything to prevent you  
15 from being made the director of that  
16 bureau?

17 A. Well, as in the case of LCE,  
18 I'm aware that Colonel Coury sent out  
19 a message to his bureau directors and  
20 asked for recommendations from the  
21 bureau directors for various  
22 promotional --- promotions.

23 Q. And so Lieutenant Colonel  
24 Coury sent out a message asking,  
25 basically saying give me some names

1 of who would be good for this job?

2 A. Yes.

3 Q. And who submitted your name to  
4 Lieutenant Colonel Coury as the  
5 person that would be great for being  
6 director?

7 A. I don't think that happened,  
8 ma'am.

9 Q. I just wondered because you  
10 said that Lieutenant Colonel Coury  
11 asked for recommendations. And then  
12 you said that he blocked your  
13 promotional opportunities. So I'm  
14 trying to figure out what he did,  
15 what actions Lieutenant Colonel Coury  
16 took?

17 A. What I've testified to earlier  
18 is based on my experience in  
19 discussing promotional opportunities  
20 with Colonel Coury when I was the  
21 director of IA or systems and process  
22 review, in that the process is what  
23 I've described, that the commissioner  
24 takes recommendations.

25 Q. So rather than blocking you,

1 essentially, he just didn't recommend  
2 you?

3 A. That's extremely likely,  
4 ma'am.

5 Q. Okay. And then over at BLCE,  
6 that's the Bureau of Liquor Control  
7 Enforcement, I think? I should know  
8 that one, but ---.

9 A. Correct.

10 Q. Can you tell me what promotion  
11 there was blocked?

12 A. The bureau director's  
13 position.

14 Q. When was that open; do you  
15 know?

16 A. I believe Major DeWire was  
17 promoted and transferred in about  
18 July of 2000.

19 Q. Who took his place?

20 A. Captain McDonald. Who took  
21 Major DeWire's place?

22 Q. Yes.

23 A. Captain McDonald.

24 Q. And he's the current bureau  
25 director?

1 A. Major DeWire is the current  
2 bureau director; correct.

3 Q. Okay. I'm confused. The  
4 opening that you think that you  
5 should have gotten was the position  
6 that Major DeWire got?

7 A. Yes.

8 Q. Okay. I understand now. So  
9 that's where Koscelnak comes in;  
10 right? Was Koscelnak the former  
11 bureau director?

12 A. Yes.

13 Q. And that was while you were  
14 actually working in the Bureau of  
15 Liquor Control Enforcement?

16 A. When I was assigned there,  
17 Major Koscelnak was the bureau  
18 director, correct. And then he  
19 transferred.

20 Q. Okay. And then that's when  
21 Major DeWire was promoted?

22 A. Yes.

23 Q. And again, do you have any  
24 first-hand knowledge of anything that  
25 Lieutenant Colonel Coury actually did

1 to stop you from receiving that  
2 promotion?

3 A. By this time, I believe,  
4 Colonel Coury has now moved over to  
5 the director --- deputy commissioner  
6 of operations position. Whereas,  
7 before, he was the director of  
8 administrations. So the rest would  
9 then logically follow as I've just  
10 described, recommendation and what  
11 have you.

12 Q. And that's because why? Why  
13 would that logically follow? I'm  
14 sorry. You have to help me out,  
15 because I don't really know.

16 A. Well, what I just described  
17 about the input of the deputy as to  
18 who gets the position.

19 Q. I think what I don't  
20 understand is, him changing from ---  
21 because I don't really know what the  
22 administration versus operations.

23 A. Because the Bureau of Liquor  
24 Control Enforcement is in the chain  
25 of command relationship under the

1 deputy of operations.

2 Q. Okay. So administration ---  
3 so BPR would be under administration?

4 A. Correct.

5 Q. So that when he was --- so you  
6 believed that when he was the deputy  
7 commissioner in charge of  
8 administration that he could have had  
9 you made the bureau director of BPR.

10 A. Yes.

11 Q. And then when he moved to  
12 operations and an opening came up in  
13 the Bureau of Liquor Control  
14 Enforcement, he could have made you  
15 the major then?

16 A. Correct.

17 Q. Okay. Do you know of any  
18 other promotional opportunities that  
19 Lieutenant Colonel Coury somehow  
20 blocked?

21 A. Not personally, no.

22 Q. What do you mean by not  
23 personally?

24 A. I don't have personal  
25 knowledge that he has blocked any

1 additional opportunities for me.

2 Q. Do you have some other kind of  
3 hearsay-type knowledge of that?

4 A. Would you consider rumors to  
5 be hearsay?

6 Q. Is it just some rumors or ---?

7 A. Yes.

8 Q. And what's the rumor? Taking  
9 it for what it is, it's a rumor, but  
10 what's the rumor?

11 A. Well, the rumors that surround  
12 me and my opportunities are that I  
13 don't have any. And that I was sent  
14 to Washington --- they attempted to  
15 send me to Washington to let me know  
16 that my career was over.

17 ATTORNEY BAILEY:

18 Washington,

19 Pennsylvania?

20 A. Washington, PA.

21 BY ATTORNEY GUIDO:

22 Q. Okay.

23 A. And that whenever my name is  
24 brought up amongst my peers or in a  
25 context of rumors, it's generally

1 thought of as quite laughable that  
2 they would even think of promoting me  
3 because of the actions of these  
4 Defendants and what they've done to  
5 my reputation in this agency.

6 Q. Who have you heard those  
7 rumors from?

8 A. Ma'am, I couldn't even begin.  
9 Okay. If you want a list, I'll try  
10 to come up with a list, the best I  
11 can. Major DeWire, Captain McDonald,  
12 Major Merryman, Major Morris, Major  
13 Sillhamer (phonetic), Lieutenant  
14 Benedict, subordinates, Corporal  
15 Karbowski, Sergeant Sweeting,  
16 Sergeant Starr, Sergeant Backenstoss  
17 (phonetic), and virtually everyone  
18 that I have worked directly with or  
19 indirectly with for the past two or  
20 three years.

21 Q. Has Lieutenant Colonel Hickes  
22 ever told you that?

23 A. No, not that I can recall.

24 Q. He certainly wouldn't have any  
25 reason not to think highly of you;

1 would he?

2 ATTORNEY BAILEY:

3 Objection. The  
4 question was not what these  
5 people thought of him. The  
6 question is what was imparted  
7 him by rumor. And any  
8 inference that the people he  
9 named ever indicated they do  
10 not think highly of Captain  
11 Ober or any indication of  
12 anything of that sort is  
13 objected to.

14 ATTORNEY GUIDO:

15 I didn't make that  
16 inference.

17 ATTORNEY BAILEY:

18 That's a  
19 mischaracterization.

20 BY ATTORNEY GUIDO:

21 Q. I'm sorry. That wasn't an  
22 inference I was intending to put out  
23 there, that these people didn't think  
24 highly of you. What I was saying is,  
25 Lieutenant Colonel Hickes is part of

1 the command staff.

2 A. Yes.

3 Q. Who could make  
4 recommendations, et cetera, about who  
5 should be a major. And I'm saying  
6 --- you're saying that you think that  
7 the rumor is that your career is  
8 over. And I'm saying, well, isn't it  
9 true that Lieutenant Colonel Hickes  
10 would still think quite highly of  
11 you?

12 A. It's more than rumor, ma'am.  
13 You just have to look at where I've  
14 been for the past two years and that  
15 would pretty much come clear to you,  
16 I believe.

17 Q. Okay.

18 A. But to answer your question  
19 about Colonel Hickes, yes, I would  
20 expect that he would have a high  
21 recommendation for me, yes.

22 Q. Okay. And then in the same  
23 paragraph you said that Lieutenant  
24 Colonel Coury launched another  
25 totally improper investigation into

1 your personal affairs. What  
2 investigation are you referencing  
3 there?

4 A. He launched an investigation  
5 into my personal collection of PSP  
6 memorabilia.

7 Q. That would be the one ---  
8 that's the investigation you were  
9 talking about that was IAD 1999-409?

10 A. Yes.

11 BRIEF INTERRUPTION

12 ATTORNEY GUIDO:

13 Exhibit Number Ten  
14 would be the use of force  
15 complaint, reception,  
16 processing worksheet for that  
17 investigation, IAD 1999-409.

18 (Deposition

19 Exhibit Number Ten  
20 marked for  
21 identification.)

22 BY ATTORNEY GUIDO:

23 Q. And that's the one that you  
24 said that Lieutenant Colonel Coury  
25 launched?

1 A. Yes.

2 Q. According to the use of force  
3 complaint processing worksheet, it  
4 indicates that a complaint was  
5 received from Philip Conti; correct?

6 A. Uh-huh (yes).

7 Q. Wouldn't Philip Conti really  
8 be the complainant there?

9 A. He would be the complainant,  
10 according to the way this is  
11 documented, yes.

12 Q. Rather than Lieutenant Colonel  
13 Coury?

14 A. No.

15 Q. Lieutenant Colonel Coury ---.

16 A. It has Coury listed as the  
17 complainant.

18 Q. That's what I'm asking. Can  
19 you help me find the --- the  
20 complaint information, so this is  
21 where you put the complainant's name?

22 A. Yes, ma'am.

23 Q. Okay. And he says that he's  
24 initiating this, according to this  
25 document, based on a complaint

1 received from Philip Conti?

2 A. Yes.

3 Q. Now, you indicated in your  
4 Complaint that this IAD 1999-409 was  
5 a completely improper investigation.  
6 What was improper about this  
7 investigation?

8 A. Can I have a moment to review  
9 this?

10 Q. Sure.

11 WITNESS REVIEWS DOCUMENT

12 A. I'm sorry. Did you have  
13 a ---?

14 BY ATTORNEY GUIDO:

15 Q. Yes. You've made an  
16 allegation that Lieutenant Colonel  
17 Coury ---.

18 A. Wait, I didn't read this. Can  
19 I finish this, please? I didn't  
20 realize there was another letter  
21 here.

22 WITNESS REVIEWS DOCUMENT

23 A. Well, you've answered your own  
24 question if you read these letters,  
25 ma'am. But I'll try to clarify ---.

1 BY ATTORNEY GUIDO:

2 Q. I haven't answered my own  
3 question. Okay. Let me ask the  
4 question this way. With respect to  
5 the administrative inquiry, and I  
6 forget the other number but the one  
7 that Colonel Evanko did in June of  
8 1999, the one he ordered, that you  
9 said that it was different than all  
10 the others that you had been part of?

11 A. Yes.

12 Q. And you said the thing that  
13 was really improper about that was  
14 that it was launched when there was  
15 no allegation of wrongdoing by  
16 anybody. Now, in this situation,  
17 there is an allegation of wrongdoing.

18 So what is improper about this  
19 particular investigation, 1999-409?

20 A. Well, I've seen more  
21 information now about this incident  
22 than I have ever been allowed to see.  
23 So can I change an answer? This  
24 might be the second most improper  
25 investigation I've ever seen. If the

1 one that Werts and Williams did on me  
2 was the first, then this might be the  
3 second. Because there is no  
4 allegation of misconduct here.

5 Q. Okay. And so your position is  
6 that there's no allegation of  
7 misconduct in 1999-409? So that  
8 one's also improper?

9 A. Can you show me? Counsel, can  
10 you steer me to where there's an  
11 allegation of misconduct.

12 Q. I'm just asking you, is there  
13 or is there not an allegation ---?

14 A. No, I'm asking, can you point  
15 me in the direction? I'm asking for  
16 some help. I don't see it. I see a  
17 lot of conjecture by someone.

18 Q. By someone, meaning who?

19 A. Well, enclosure number four is  
20 from Philip, retired Colonel Conti.  
21 And he even says, he's using his rank  
22 and post within the department to  
23 give the impression, blah, blah,  
24 blah. There's no evidence that any  
25 of that ever occurred. But he

1 continues to say, if we can't prove  
2 it --- if we can't prove him doing  
3 something criminally wrong, then I  
4 believe he is doing something for  
5 which he should be disciplined. But  
6 no one seems to know what.

7 ATTORNEY BAILEY:

8 Could be disciplined by  
9 the department.

10 A. And on this basis an  
11 investigation of my personal affairs  
12 was launched by the department.

13 BY ATTORNEY GUIDO:

14 Q. Okay. But now at that time,  
15 Mr. Conti was retired; correct? He  
16 wasn't somebody in the state police?

17 A. That's correct. He was then  
18 probably 82, 83 years old.

19 Q. So someone outside the state  
20 police, whether there is any facts to  
21 back them up or not, someone outside  
22 the state police complained that you  
23 had improperly used your position as  
24 a state trooper. Whether that's true  
25 or not, I'm not asking you. What I'm

1 saying is, he complained about it.  
2 Whether he had facts, didn't have  
3 facts, someone outside the department  
4 complained that you had improperly  
5 used your position as a state  
6 trooper; is that right?

7 ATTORNEY BAILEY:

8 I object.

9 BY ATTORNEY GUIDO:

10 Q. Isn't that what you just read  
11 to me, said to me?

12 ATTORNEY BAILEY:

13 Counsel, you're using a  
14 conclusion by someone that he  
15 did something wrong, as if an  
16 investigator or someone who's  
17 capable in looking at this  
18 material would say, yes, there  
19 is something wrong there,  
20 somebody qualified.

21 ATTORNEY GUIDO:

22 No, that's not what I  
23 mean. It's not my implication  
24 and that's not what I'm asking  
25 you.

1 ATTORNEY BAILEY:

2 Well, it may not be  
3 your implication, but you're  
4 asking us to make an  
5 assumption that there is an  
6 underlying basis for the  
7 complaint ---

8 ATTORNEY GUIDO:

9 No, I'm not.

10 ATTORNEY BAILEY:

11 --- by this Phil  
12 person, this Phil Conti.

13 ATTORNEY GUIDO:

14 No, I'm not.

15 ATTORNEY BAILEY:

16 It's obviously a desire  
17 to get at Mr. Ober, because he  
18 has some reason to compete  
19 with him.

20 ATTORNEY GUIDO:

21 I'm not asking ---.

22 ATTORNEY BAILEY:

23 Not that Mr. Ober did  
24 anything wrong.

25 BY ATTORNEY GUIDO:

1 Q. I'm not asking you that, sir.  
2 In fact, I'm asking you just the  
3 opposite. Whether there's any truth  
4 to it or not, to the underlying  
5 allegation, the fact is that Mr.  
6 Conti did send a complaint in  
7 accusing you of this; right?

8 A. I think there's a little more  
9 to it than that, Counsel.

10 Q. Okay. But first answer that  
11 question and then go on to explain.  
12 But he did send in something accusing  
13 you of that; correct?

14 A. He sent something to Bill.

15 Q. Bill?

16 A. I don't know. I don't know  
17 who Bill is.

18 Q. Whoever the letter ---  
19 there's an accusation here?

20 A. No. This is not a letter of  
21 complaint to the Pennsylvania State  
22 Police. This is a letter to Bill.

23 Q. Right. I understand.

24 A. Well, what's to prevent ---.

25 Q. But what I'm saying is, he has

1 made a complaint?

2 A. If you wrote a letter to your  
3 husband and said something about the  
4 state police, would that  
5 automatically springboard --- I'm  
6 trying to answer your question.

7 Q. No, you're not.

8 ATTORNEY BAILEY:

9 Move to strike.

10 BY ATTORNEY GUIDO:

11 Q. And I really don't want to,  
12 you know, try to go through all of  
13 this in detail, but ---.

14 ATTORNEY BAILEY:

15 Counsel, you're asking  
16 him to respond to a  
17 conclusory ---

18 ATTORNEY GUIDO:

19 No, I'm not.

20 ATTORNEY BAILEY:

21 --- comment by someone.

22 If I wrote a letter to someone  
23 and say, please investigate  
24 Syndi Guido, because didn't  
25 she rob a bank the other day.

1 I mean, I hope I'd need to  
2 have something more.

3 BY ATTORNEY GUIDO:

4 Q. I am not trying to imply in  
5 any way, shape or form that you did  
6 anything wrong here, sir. As a  
7 matter of fact, it was unfounded;  
8 right?

9 A. And, ma'am, I'm not taking it  
10 as such.

11 Q. I think that seems to be that  
12 people are reading something into my  
13 questions. That's not ---

14 ATTORNEY BAILEY:

15 No, I'm not reading  
16 anything into ---.

17 BY ATTORNEY GUIDO:

18 Q. --- what's meant there.

19 ATTORNEY BAILEY:

20 Just frame the question  
21 properly. Why don't you  
22 simply ask him what he knows  
23 about this?

24 ATTORNEY GUIDO:

25 I am asking the

1 questions. When you ask the  
2 questions, you ask them the  
3 way that you want to.

4 ATTORNEY BAILEY:

5 Well, don't frame them  
6 in a way that puts him in a  
7 box and commenting ---.

8 ATTORNEY GUIDO:

9 Quit being an  
10 obstructionist. You know,  
11 I've been very patient in  
12 letting you make all sorts of  
13 comments, speaking objections,  
14 telling your client how to  
15 answer, answer questions for  
16 your client, and this  
17 particular issue is really not  
18 a big complicated question.  
19 It's a simple one.

20 BY ATTORNEY GUIDO:

21 Q. And that is, this situation is  
22 different than the situation that  
23 you're talking about in the summer of  
24 1999, because here there was some  
25 outside complaint, right, wrong,

1 false, whatever, that you had done  
2 something wrong? Is that what you  
3 were trying to say?

4 ATTORNEY BAILEY:

5 Objection to the use of  
6 the word complaint. You may  
7 respond.

8 A. Here's what I was trying to  
9 get to earlier. This is a letter  
10 from Phil Conti to Bill.

11 BY ATTORNEY GUIDO:

12 Q. Right.

13 A. Okay?

14 Q. That somehow makes its way to  
15 the state police?

16 A. Yes.

17 Q. Okay.

18 A. Somewhere in this canyon, this  
19 ends up in the state police as a  
20 complaint. According to our  
21 regulations, one thing that's  
22 supposed to happen, and if you have  
23 that, I'd be very eager to see it,  
24 would be a complaint verification  
25 form, where the complainant, if it's

1 Phil or Bill or Tom or whomever, I'd  
2 like to see the complaint  
3 verification, wherein those people  
4 are asked to attest to what it is  
5 they're speaking of.

6 Q. I'll have to look for it. I  
7 don't know.

8 A. Okay.

9 Q. But I'm getting at the part  
10 about what's improper. I mean, here,  
11 this is an investigation that ends up  
12 clearing you, ends up vindicating  
13 you. What's wrong with having ---  
14 I'm trying to understand what could  
15 possibly be so bad about having  
16 somebody out there saying that you  
17 did something wrong and you didn't do  
18 anything wrong? An investigation is  
19 done. It shows you didn't do  
20 anything wrong. What's so bad about  
21 that? That's all I'm trying to find  
22 out.

23 A. Well, the fact that you have  
24 to ask the question tells me you  
25 don't understand, Ms. Guido. So let

1 me try to explain it to you.

2 Q. Okay.

3 A. What's wrong, first of all is,  
4 my off-duty affairs are not the  
5 business of the state police.  
6 Secondly, in this particular  
7 instance, I was disciplined for this  
8 before I was ever interviewed. And  
9 as you have emphatically stated, the  
10 investigation was ultimately  
11 determined to be unfounded.

12 Q. Yes. By Lieutenant Colonel  
13 Coury; right?

14 A. I found that out eventually.  
15 I was never informed of that.

16 Q. Well, didn't you get a notice  
17 of it?

18 A. No.

19 ATTORNEY GUIDO:

20 I want the part that  
21 says he was cleared.

22 ATTORNEY BAILEY:

23 I think you're  
24 referring to the notification,  
25 Syndi. Your question to him

1           was whether he was ever  
2           notified. His response was  
3           no, he was not notified.

4           ATTORNEY GUIDO:

5                     That it was unfounded,  
6           was my question to him.

7   A.       I know the form that you're  
8   looking for and it's not important.  
9   I know which one you're looking for.  
10 I did find it, but it was never given  
11 to me.

12   BY ATTORNEY GUIDO:

13   Q.       Exhibit Eleven is a memo to  
14 you dated December 23, 1999. It's  
15 from Lieutenant Colonel Coury;  
16 correct?

17                     (Deposition  
18                     Exhibit Number Eleven  
19                     marked for  
20                     identification.)

21   A.       Yes.

22   BY ATTORNEY GUIDO:

23   Q.       And in paragraph one it says,  
24 after careful review of enclosure  
25 one, I have concluded that the

1 allegation is unfounded; correct?

2 A. Yes.

3 Q. So Lieutenant Colonel Coury is  
4 the person who decided that in the  
5 end, after reviewing the evidence,  
6 that the complaint against you was  
7 unfounded?

8 A. Yes. But I was never given  
9 this, ma'am. This was never  
10 presented to me. I found this. The  
11 only way I ever knew this was when I  
12 requested to review my troop bureau  
13 file, I found a copy of this ---  
14 well, whenever that was. In the  
15 summer of 2000, I believe.

16 Q. So in December 1999, the memo  
17 was written to you, but for whatever  
18 reason, you didn't receive it?

19 A. For whatever reason, I didn't  
20 receive it.

21 Q. And you don't know what the  
22 reason you didn't receive it was?

23 A. No, ma'am.

24 Q. Whether it got lost or it was  
25 intentional?

1 A. No.

2 Q. You don't know one way or the  
3 other?

4 A. No. I also don't know why  
5 Lieutenant Colonel Coury was the  
6 adjudicator of this investigation,  
7 when in normal circumstances that  
8 would be the troop commander bureau  
9 director's responsibility. At the  
10 time I was assigned --- during the  
11 time when this investigation was  
12 conducted through its conclusion, I  
13 was not assigned under Lieutenant  
14 Colonel Coury's command. I was under  
15 Lieutenant Colonel Hickes.

16 Q. Well, even if he wasn't the  
17 right person to be the final  
18 adjudicator, you certainly didn't  
19 suffer any harm from that; did you?

20 A. Yes, I most certainly did.

21 Q. With him finding you  
22 unfounded? How were you harmed by  
23 him making a decision when he found  
24 that it wasn't founded?

25 A. Do you have notification that

1 they sent follow-up correspondence to  
2 these individuals, to Tom ---?

3 ATTORNEY BAILEY:

4 Hold it just a minute.

5 BRIEF INTERRUPTION

6 ATTORNEY BAILEY:

7 Okay. Snyder, your  
8 question was how has he been  
9 injured?

10 BY ATTORNEY GUIDO:

11 Q. Yes. My question is how were  
12 you harmed by Lieutenant Colonel  
13 Coury making a decision when he made  
14 a decision that was favorable for  
15 you?

16 A. Well, I've been harmed in that  
17 I go back to the very nexus of this  
18 investigation. There was never  
19 enough threshold standards to even  
20 conduct it to begin with. I've been  
21 harmed --- you have correspondence  
22 that was sent to Mrs. Hayman or Tom  
23 and Phil and Bill that follow up and  
24 tell them that I've been vindicated  
25 on these accusations and these

1 charges? I was removed from the book  
2 committee before I was ever  
3 interviewed, as a disciplinary action  
4 by Evanko.

5 I get a letter in my in-box  
6 without any conversation with me. No  
7 one discussed this with my  
8 supervisor, with the project  
9 director, with the bureau director,  
10 with Deputy Commissioner Hickes. The  
11 memo said I was basically being  
12 kicked off the book committee because  
13 I'm too busy with my IIMS assignment.  
14 I made inquiries of my supervisors  
15 and I said, has there been a problem  
16 with me completing my work on time?  
17 Is time management an issue? And  
18 they were all flabbergasted. They  
19 had no idea what I was talking about.  
20 Q. Okay. Some of your answers  
21 are so long, I need to go back a  
22 little bit because you lost me at one  
23 point. About whether when you were  
24 --- these people, Phil Conti, the  
25 people at --- you said that they had

1 or hadn't received correspondence?

2 A. I'm asking you if they have  
3 ever received correspondence from the  
4 department clearing my name on these  
5 charges?

6 Q. I don't know. I thought you  
7 were telling me that they had or they  
8 hadn't.

9 A. Well, I certainly hope they  
10 have.

11 Q. I was clarifying your answer.

12 A. And the other harm and damage  
13 that's come to me as a result of this  
14 improper investigation is my  
15 reputation among my peers. I've been  
16 --- I've heard rumors that I've been  
17 a criminal suspect in stealing PSP  
18 grade markers, for God's sake.

19 Q. Who said that?

20 A. Major DeWire. He called ---  
21 a rumor came up out of the northeast.  
22 Phil Conti writes an article for  
23 The Communicator. When he broadcasts  
24 his plea for artifacts and under no  
25 circumstances is anyone to turn

1 anything over to a private collector  
2 and wrote some very, very  
3 inflammatory things about private  
4 collectors, I must have gotten half a  
5 dozen phone calls from people who  
6 said, Conti's writing about you.  
7 Also, I'm aware that he made these  
8 complaints to the museum committee.  
9 And during that museum committee ---.

10 Q. Conti made the complaints?

11 A. Conti made these --- Conti and  
12 others at the museum committee raised  
13 these objections to which Evanko  
14 said, well, write it up in  
15 The Communicator or I'll make sure it  
16 gets in The Communicator, words to  
17 that effect. And Coury says, without  
18 any more info than you have here,  
19 just give me their names and we'll  
20 have them investigated.

21 Q. Have who investigated?

22 A. Have these collectors  
23 investigated.

24 Q. So whether in writing or at  
25 these different meetings, I mean,

1     there's no doubt Mr. Conti was going  
2     around making accusations against you  
3     that were unfounded, but were Mr.  
4     Conti badmouthing you?

5     A.         Unfortunately, he's no longer  
6     with us to verify that statement,  
7     ma'am. But all I see in the letter  
8     from Mrs. Hayman is I received a  
9     letter and visit from Darrell Ober.

10    Q.         How did you know then that he  
11    was saying, casting these aspersions  
12    against you at the museum committee  
13    meetings?

14    A.         Several of the committee  
15    members told me that.

16    Q.         Do you remember who?

17    A.         Captain Simmers (phonetic)  
18    would be one, Major Regan (phonetic)  
19    would be another.

20    Q.         Okay. Now, in paragraph 44,  
21    you said that on at least two  
22    occasions Lieutenant Colonel Westcott  
23    also personally violated your rights  
24    in carrying out the vindictive,  
25    unlawful desires of Colonel Evanko by

1 changing his recommendation for a  
2 PEMA appointment causing Plaintiff's  
3 removal. And then there's another  
4 part about changing your selection.  
5 Can you just tell me what happened  
6 with PEMA? I don't really understand  
7 what the allegation is there.

8 A. Okay. Before we get there, I  
9 need you to also know that Colonel  
10 Conti is someone that I was familiar  
11 with and had talked to a number of  
12 occasions over the years. Prior to  
13 the museum being --- the committee  
14 forming and the plans taking shape,  
15 Colonel Conti is someone that I would  
16 often go to to seek assistance in  
17 identifying various artifacts.

18 There was also a point in time  
19 that through his retirees' column,  
20 Colonel Conti advertised not only his  
21 own items for sale, principally his  
22 book, but he allowed others to  
23 participate. In fact, I believe some  
24 of those are museum committee  
25 members. They, on different

1 occasions, listed items of PSP  
2 memorabilia for sale. And on at  
3 least one occasion, Colonel Conti put  
4 me in touch with someone who had PSP  
5 artifacts for sale, which I  
6 subsequently purchased. On paragraph  
7 44 ---.

8 Q. Yes. I need to understand  
9 what the accusation is against  
10 Lieutenant Colonel Westcott.

11 A. With respect to PEMA, after  
12 the injunction, the Commonwealth  
13 Court injunction, which stopped the  
14 disciplinary transfer of mine to  
15 Troop B, Washington, I was  
16 subsequently demoted to the rank of,  
17 to the position of section commander  
18 in the Bureau of Liquor Control  
19 Enforcement. Excuse me. I forgot a  
20 part. When I was first notified or  
21 soon after being notified of my  
22 transfer to Washington, I had e-  
23 mailed Captain Davis and let him know  
24 that I would no longer be available  
25 for a PEMA assignment. I don't know

1     how much detail you want about that  
2     assignment, but it's a secondary  
3     assignment that I participated in for  
4     several years.

5     Q.       I think I understand what the  
6     PEMA assignment is, but I guess  
7     you're getting now at the chronology  
8     that --- my real question is, that  
9     is, you were transferred to LCE and  
10    then you notified who that you  
11    wouldn't be able to do the PEMA  
12    assignment?

13    A.       When I was first transferred  
14    to Troop B, Washington, I notified  
15    Captain Davis, who was the department  
16    --- all I can think of is discipline.  
17    Department ---.

18    Q.       Is he in charge of PEMA stuff?

19    A.       Yeah. Why don't we call him  
20    captain of disaster? I can't recall  
21    exactly ---.

22    Q.       Just so that we're clear, PEMA  
23    is the Pennsylvania Emergency  
24    Management Agency; right?

25    A.       Yes.

1 Q. And the state police's role  
2 with that agency is what?

3 A. That's a multi-agency endeavor  
4 and PSP's role is to have on call an  
5 officer and two or three subordinates  
6 that comprise that team. The teams  
7 are loosely structured. But in the  
8 event of an emergency call-out, that  
9 officer usually is activated by  
10 Captain Davis or perhaps the bureau  
11 director. But Captain Davis acts in  
12 that role to facilitate and to make  
13 sure --- he's a one-man show and he  
14 makes sure that someone is available  
15 to staff the cell at the PEMA  
16 emergency headquarters.

17 Q. And so if there is an  
18 emergency, such as when the plane  
19 went down on September 11th, is that  
20 a time consuming role to be a PEMA  
21 officer?

22 A. It can be.

23 Q. If there's an emergency, it  
24 can turn into something that's ---?

25 A. It can. I served on PEMA

1 since at least 1993. When I first  
2 went on to that detail, I think the  
3 component heads were all lieutenants.  
4 I could be wrong on that, but I think  
5 I went in as a lieutenant. I had  
6 served in that position as a central  
7 section commander of the systems and  
8 process review division, as the  
9 division director of the systems and  
10 process review division, as a  
11 division director of the internal  
12 affairs division. And when I was  
13 assigned to the multi-million dollar  
14 IIMS project, at no time, no time,  
15 was there ever a question on conflict  
16 and duty with PEMA, and with respect  
17 to my primary duty assignment ever.

18 Q. Well, I was just wondering why  
19 when you were told of your transfer  
20 out west, why did you tell Captain  
21 Davis you weren't going to be able to  
22 be a PEMA liaison any more?

23 A. Because I was told by Major  
24 Washington --- excuse me, by Major  
25 Zapinka (phonetic) that I was to

1 report for work and remain during the  
2 workday and end my workday at my duty  
3 station of Troop B, Washington.

4 Therefore, that would make me  
5 ineligible. PEMA is basically a  
6 Harrisburg assignment. Does that  
7 help?

8 Q. Okay. So if you're not  
9 located in the Harrisburg area, you  
10 can't do PEMA?

11 A. Correct. Typically, it's been  
12 my experience --- I'm not saying that  
13 it's never been done. But I don't  
14 know of an occasion when they used  
15 troop members. It's a headquarters  
16 assignment.

17 Q. And then what happened next,  
18 getting to the part of where  
19 Lieutenant Colonel Westcott got  
20 involved somehow?

21 A. Well, as you know, the  
22 Commonwealth Court blocked the  
23 disciplinary transfer. And a short  
24 time thereafter I was demoted to LCE.  
25 That being the case, I then e-mailed

1 Captain Davis, like, well, I'm still  
2 in Harrisburg, so there would be no  
3 reason for me not to continue in the  
4 assignment that I've been enjoying  
5 for several years. So I e-mailed  
6 Captain Davis words to the effect of,  
7 you know, the transfer didn't go  
8 through, I'm available, is my spot  
9 still open or whatever? And he  
10 responded by saying that it was fine  
11 with him, you know ---.

12 Q. With Captain Davis?

13 A. With Captain Davis and Major  
14 Washington, the bureau director.  
15 Just make sure that it's suitable or  
16 just touch base with my bureau  
17 director. As a matter of protocol,  
18 more than anything else. My bureau  
19 director being Major Koscelnak. When  
20 I approached Major Koscelnak or, I  
21 guess, the first --- I believe the  
22 first dialogue we had over that issue  
23 was by e-mail, I think. But I did  
24 e-mail him on several occasions. But  
25 anyway, I summarized what I've just

1 said to you in ten words or less that  
2 I'd like to continue in PEMA now that  
3 I'm here. And his response was that  
4 he would have to check into that and  
5 get back to me.

6 Q. And then what happened next?

7 A. The day after the newspaper  
8 article about the injunction that  
9 prohibited the disciplinary transfer  
10 to Troop B, Washington, the day after  
11 that appeared in the newspaper, I was  
12 told I could not serve on PEMA.

13 Q. Who told you that?

14 A. Major Koscelnak.

15 Q. And did Major Koscelnak say  
16 why?

17 A. Yes.

18 Q. What did he say?

19 A. He said he wanted to afford me  
20 the opportunity to become fully  
21 involved in my new duties.

22 Q. Okay. And how did Westcott  
23 come into play there?

24 A. Initially, he didn't. I  
25 subsequently found that Westcott had

1 --- well, the term front office was  
2 used.

3 Q. By Koscelnak?

4 A. I determined --- no, by Major  
5 DeWire. I determined that front  
6 office more than likely meant  
7 Westcott, if not the whole bunch of  
8 them.

9 Q. So at what point did you --- I  
10 guess maybe I should just let you go  
11 on chronologically. It might be  
12 simpler. What happened next with  
13 this ---?

14 A. Well, I'd also like to ---.

15 ATTORNEY GUIDO:

16 Hold on we need to  
17 change ---.

18 MS. LYDE:

19 Excuse me. Before he  
20 goes there I need to change  
21 tapes. 2:17 p.m. This is the  
22 end of tape two, Darrell  
23 Ober's deposition.

24 SHORT BREAK TAKEN

25 MS. LYDE:

1                   2:27 p.m., we're back  
2                   on video.

3           BY ATTORNEY GUIDO:

4           Q.           I think what we were ---.

5           A.           Pardon me. Before we go ---.

6           Q.           Sure.

7           A.           I believe we're into PEMA.  
8           Something occurred to me during the  
9           break I'd like to finish. I think I  
10          started this response, but didn't  
11          finish it.

12          Q.           On PEMA or a different topic?

13          A.           On a different topic.

14          Q.           Okay.

15          A.           On the museum investigation.

16          Q.           Yes.

17          A.           You had talked about damages  
18          and how that's affected me. I was a  
19          part of a book committee and there  
20          were several other members on that  
21          committee. Mark Infantino would be  
22          the project chairperson, I guess, for  
23          lack of a better term. And my  
24          question or my observation would be  
25          the same with respect to have my

1 fellow committee members ever been  
2 notified of this? I was booted off  
3 that committee before ever being  
4 interviewed regarding this whole  
5 matter. It was a terribly abusive  
6 thing to have happened and I'm only  
7 left to wonder what my fellow  
8 committee members have concluded,  
9 based on my removal.

10 Q. Do you have any reason to  
11 think that they know about this  
12 investigation?

13 A. Yes.

14 Q. The 409-99 ---?

15 A. Yes. Mark Infantino knew  
16 about it before I did. The letter  
17 was sent to him. That letter booting  
18 me off the committee was not even  
19 sent to me. It was sent to ---.

20 Q. That letter doesn't mention  
21 anything about the investigation;  
22 correct?

23 A. Correct. It talks about how  
24 busy I am for a project that was four  
25 years from being completed. I was in

1 a six or eight-month detached  
2 assignment. That's what the  
3 silliness of this whole matter is,  
4 Ms. Guido, is the letter articulated  
5 that I had to devote my time to this  
6 project. I was only ever intended on  
7 being there six or eight months.

8 Q. The IIMS project?

9 A. Yes, ma'am. The centennial  
10 book is not even due to be published  
11 until the year 2004 or 2005.

12 Q. Did Mr. --- is his name  
13 Infantino?

14 A. Infantino, correct.

15 Q. Did he tell you at any point  
16 that he believed you were taken off  
17 the committee because you had done  
18 anything wrong?

19 A. He told me that he knew I had  
20 a target on my back and they were out  
21 to get me.

22 Q. And I don't know the answer to  
23 your question. Backing up to or  
24 going forward again to PEMA.

25 A. Yes.

1 Q. I think we were at the point  
2 where Captain DeWire told you that  
3 --- and maybe it wasn't Captain  
4 DeWire --- Major Koscelnak checked  
5 with the front office?

6 A. Yes.

7 Q. Okay. Let's go from there.  
8 What did you find out about what  
9 Major Koscelnak did?

10 A. I think we might have left off  
11 where Major Koscelnak said that he  
12 would check on my inquiry which, by  
13 the way, I found odd. All the other  
14 bureau directors I've had were able  
15 to reach a determination almost  
16 instantly. But it was a couple  
17 weeks, if not more than that, until I  
18 found out --- until Major Koscelnak  
19 did get back to me. He came and  
20 visited me in my office and, again,  
21 that was a day after the newspaper  
22 article, first newspaper article  
23 appeared, and told me that, you know,  
24 he needed me there for section  
25 duties.

1           He has subsequently testified  
2     in these deposition that the position  
3     for --- need was crucial, I believe  
4     was the term that he used. I would  
5     just like to tell you that if that  
6     were the case, no one told me about  
7     that. That's a whole other matter,  
8     I'm sure.

9     Q.        Okay.

10    A.        But with respect to PEMA,  
11    that's when he told me I could not  
12    perform PEMA duties.

13    Q.        Do you know whether or not  
14    there are any restrictions that would  
15    keep somebody from LCE --- assigned  
16    to LCE, from working on PEMA?

17    A.        None. I believe it's been  
18    testified that there may be some  
19    budgetary impact. I believe Major  
20    Koscelnak might have mentioned that,  
21    but that's ---.

22    Q.        Do you know what the budgetary  
23    --- what budgetary impact?

24    A.        He was trying, and I don't  
25    recall how he phrased it, he was

1     trying to make the inference or  
2     reference that the members assigned  
3     to the Bureau of Liquor Control  
4     Enforcement come under Appropriation  
5     Code 171, the Liquor Control Board  
6     Appropriations. I believe he was  
7     lameely trying to justify that as an  
8     excuse to boot me off of PEMA. But  
9     the reality is, we've had members  
10    assigned in long-term assignments in  
11    LCE, doing non-LCE activities, most  
12    recently two LCE agents assigned to  
13    the IIMS project for probably a year  
14    or so.

15    Q.       I guess the budgetary thing,  
16    so I'm clear, that's because LCE  
17    receives its funding differently?

18    A.       Yes, that's correct, from the  
19    board.

20    Q.       And so there might be some  
21    restrictions about how LCE money  
22    could be spent as opposed to general  
23    appropriations for the state police?  
24    I mean, general state police funds,  
25    as opposed to LCE funds?

1 A. He was trying to advance that  
2 argument.

3 Q. Okay.

4 A. But that's patently incorrect.

5 Q. After Koscelnak --- after the  
6 article came out, then Koscelnak told  
7 you you couldn't be in it, then what  
8 happened next, because you said  
9 Westcott blocked you two different  
10 times?

11 A. Yes. Along about the time  
12 Major DeWire was promoted and I'm  
13 thinking that was the summer of 2000,  
14 probably June or July, off the top of  
15 my head. You had made an earlier  
16 inquiry about who replaced him.  
17 Well, I knew who replaced him and his  
18 home troop, where he came from, was  
19 Captain McDonald, Coleman McDonald,  
20 who was also one of the PEMA  
21 officers. There were three of us,  
22 Captain McDonald, myself and Captain  
23 Conway, I believe.

24 But anyway, knowing that  
25 Captain McDonald was now serving in a

1 troop assignment, he previously had  
2 served in the Bureau of Patrol, I  
3 e-mailed Captain Davis and said  
4 basically that in light of Captain  
5 McDonald's transfer from the Bureau  
6 of Patrol to a troop location, do you  
7 find yourself in the position of  
8 having an opening on PEMA? And of  
9 course, he responded yes, I do. And  
10 by the way, after I was booted off  
11 the first time, they went ahead and  
12 posted the position for someone new.

13 But bringing you up to the  
14 second time, Captain Davis said,  
15 sure, I'd love to have you back on or  
16 words, whatever. And just clear it  
17 with your bureau director the same as  
18 before, so I did. I went in to  
19 Captain --- or excuse me, then Major  
20 DeWire, who had assumed command and  
21 had also previously supervised me as  
22 a member of PEMA, made that request.  
23 And he said, sounds good to me.  
24 That's fine with me. And he would  
25 call --- I don't recall whether he

1 initiated the call to Major  
2 Washington, who's the bureau director  
3 of PEMA, Captain Davis' boss. Got  
4 it?

5 Q. Yes.

6 A. Okay. I don't know who  
7 initiated what call. But in any  
8 event, there was a discussion between  
9 them, apparently. Because after I  
10 made the request of Major DeWire it  
11 was --- I don't know, it was only a  
12 day, it may have been that day, but  
13 it was only a day or so. He walked  
14 by my office in the morning and, you  
15 know, give me the thumbs up and said,  
16 do you know you're back on the red  
17 team or blue team or whatever color  
18 team you're in charge of? You're  
19 back on PEMA. I said, okay.

20 Q. Major DeWire?

21 A. Major Dewire told me this.

22 Q. Okay.

23 A. About four hours later the  
24 same day, he came to me and asked me  
25 to come over and he wanted to see me

1 in his office. So I went back to his  
2 office. And he said your PEMA career  
3 has come to a screeching halt again.  
4 I said, why? He said, well, Major  
5 Washington had just phoned him and  
6 said that I was not permitted to  
7 resume my duties on PEMA. Major  
8 DeWire said he inquired why. Major  
9 Washington said when the request got  
10 to the front office, it was denied.

11 Q. Okay.

12 A. And Major DeWire said, then I  
13 asked why. And Major Washington's  
14 comment to him was, just let it go.

15 Q. And the front office in this  
16 instance, you take that to mean  
17 Lieutenant Colonel Westcott. And why  
18 is it that Westcott would be the  
19 person that you attribute to putting  
20 a stop to it?

21 A. Well, he was the deputy  
22 commissioner of operations at that  
23 time.

24 Q. And the deputy commissioner of  
25 operations would be the person that

1 would be overseeing PEMA?

2 A. Yes. And in this instance, he  
3 would have been both of those majors'  
4 next supervisor and next in their  
5 chain of command.

6 Q. Okay. Now, on paragraph 45  
7 ---.

8 A. Can you give me a second?

9 Q. Sure.

10 A. There's something about that I  
11 wanted to just mention, but I lost my  
12 train of thought now.

13 Q. If you think of it, we can  
14 stop and go back to it.

15 A. Yeah. I lost my ---.

16 Q. In paragraph ---.

17 A. Oh, I know what it was.

18 Q. Okay.

19 A. Excuse me for interrupting  
20 you. I don't know whether it's  
21 important for you to know this or  
22 not. I'm assuming that you do, but  
23 in the event that you don't, all of  
24 these or a number of these actions  
25 that were taken against me, I was

1 filing grievances, by the way. I  
2 don't know if you're aware of that or  
3 not. Going back to the  
4 administrative inquiry, the end  
5 result of that witch hunt was that  
6 denial of my leave and pay. And I  
7 grieved that. And I filed another  
8 grievance on these PEMA removals. I  
9 filed grievances on those, as well.  
10 Q. Okay. Now, on paragraph 45,  
11 where you said that Lieutenant  
12 Colonel Conley also performed acts of  
13 vengeance for Evanko. And you  
14 mentioned stripping you of a cell  
15 phone and denying you of  
16 reimbursements. Was there anything  
17 else besides that that Colonel Conley  
18 ever did that constitutes one of  
19 these acts of vengeance?  
20 A. Yes. I would say there's  
21 probably a number of things that  
22 Colonel Conley did, in addition to  
23 these. I'll give you an example.  
24 When he called me on January 10th to  
25 let me know I was being transferred

1 to Troop B, Washington and I, of  
2 course, asked the obvious question,  
3 why? He never did give me an answer.  
4 He meandered around like he's prone  
5 to do. But I asked him again. I  
6 repeated the question and he said,  
7 well, you know I don't want you back  
8 in IAD. So I took that to mean that  
9 he had some hand in my removal,  
10 summarily my removal from internal  
11 affairs division. That would be  
12 another instance of an adverse action  
13 that comes to mind.

14 Q. Now, on the cell phone, that  
15 cell phone that you're talking about,  
16 is that a BPR cell phone?

17 A. Yes.

18 Q. And wouldn't the reason that  
19 you had to give the cell phone up is  
20 because you left BPR?

21 A. At that time, I was still  
22 detached to BPR.

23 Q. Well, tell me about your cell  
24 phone then. Maybe I'm just confused  
25 about it.

1 A. I was detached from BPR --- do  
2 you understand detachment?

3 Q. Yes.

4 A. Okay. I was detached from BPR  
5 by way of a clean message, which is a  
6 form of a department directive, on  
7 April 26th or so, 1999.

8 Q. That's the IIMS?

9 A. To the IIMS project, yes. As  
10 was the case when Colonel Evanko  
11 called me in from a day off and  
12 interviewed me for the position, the  
13 clean message indicates that upon  
14 completion of the IIMS assignment, I  
15 would be returned to the internal  
16 affairs division as the director.  
17 Sometime later that summer, along  
18 about July or August, as I recall, is  
19 when my cell phone was taken from me.

20 Q. I thought that he didn't take  
21 the cell phone until you were  
22 reassigned to the LCE, the Bureau of  
23 Liquor Control Enforcement?

24 A. No, ma'am.

25 Q. Wasn't there a memo or

300

1 something that went to you saying,  
2 turn in your property, good luck in  
3 your next assignment?

4 A. Yes. He had already stripped  
5 my cell phone of me by then.

6 Q. Was the cell phone mentioned  
7 in that?

8 A. I don't believe so.

9 Q. You don't remember?

10 A. No. I remember the e-mail.  
11 But no, the cell phone had already  
12 been turned in by then, it was  
13 already taken from me.

14 Q. At what point did the cell  
15 phone thing become an issue? While  
16 you were still at IIMS?

17 A. Yes, yes. Corporal Lydek  
18 (phonetic) called me and said that on  
19 behalf of, you know, he was  
20 collecting them, on behalf of the  
21 bureau director. They were going to  
22 be reissued.

23 Q. And he didn't give you any  
24 reason about that?

25 A. Well, at that point, I didn't

1 know I wasn't going to be reissued a  
2 phone. And when I followed up a few  
3 weeks later and called them, Corporal  
4 Lydek got very nervous about this  
5 whole conversation. And I asked him  
6 if they had been reissued and he said  
7 yes. I said, well, do you need me to  
8 stop over or words to that effect.  
9 And he said, well, I know there was  
10 an issue. He said, you really have  
11 to talk to the major. Between he and  
12 Skurkis, they didn't think you should  
13 have one and your cell phone is not  
14 going to be reissued to you.

15 Q. Okay. Now, on the denying  
16 reimbursement for expenses allowed to  
17 others.

18 A. Yes.

19 Q. What expenses, what  
20 reimbursements for what expenses,  
21 specifically?

22 A. Sometime, about this same time  
23 frame, August, September, again, as I  
24 recall, possibly October. I don't  
25 recall. I made an inquiry of

1 Sergeant Christie as to the --- I had  
2 been talking to --- I'm sorry, back  
3 up. Somewhere along that time frame,  
4 I was talking to retired Sergeant  
5 Ronald Hillegass. I think we might  
6 have met for lunch or something, but  
7 retired --- former retired sergeant.  
8 And I asked him if he ever received  
9 his division director's letter of  
10 commendation, which when I left  
11 internal affairs, we were going to  
12 frame it for him and give it to him,  
13 as a token of his years of service or  
14 retirement gift or whatever. He had  
15 indicated that he did not receive it.

16 So I made an inquiry of  
17 Sergeant Christie, who was the  
18 administrative officer in internal  
19 affairs. And pretty much the same  
20 reaction as when I talked to Corporal  
21 Lydek, it was, well, you know, I  
22 don't know. You really need to --- I  
23 know there was a big stink about that  
24 or there's a big issue about that.  
25 I'm like what, it's a letter of

1 commendation, what's the big deal?  
2 Well, you really need to talk to  
3 Major Conley. Okay. Well, he must  
4 not have been around or whatever, but  
5 I e-mailed him. And just basically  
6 said, you know, what's the issue,  
7 what's the problem? I understand  
8 there's some concern ---.

9 Q. Before the thing's ever been  
10 framed?

11 A. No. It had already been  
12 framed. It had already been,  
13 according to the receipt that I was  
14 eventually provided, when he made me  
15 pay for it, it had been framed for  
16 months.

17 Q. I was confused by that.

18 A. Okay.

19 Q. You lost me chronologically.

20 A. Okay. Try to stay with me  
21 here, Counsel. Sergeant Hillegass  
22 retired in January of 1999. And I  
23 awarded him a division director's  
24 letter of commendation.

25 Q. Right.

1       A.           And sometime during his  
2       retirement dinner or luncheon that we  
3       had for him, I said to him, would you  
4       like to have us frame that for you,  
5       and he said, sure. This was a big  
6       deal. I tasked that responsibility  
7       to our administrative assistant, Ms.  
8       Blough, Donna Blough.

9               The only recollection I have  
10      after that was I believe she  
11      attempted to have it framed in-house  
12      and it came back that they couldn't  
13      do it because it wasn't formatted  
14      correctly on the paper. I remember  
15      some discussion about, you know, we  
16      didn't observe some rules of margins.  
17      Don't ask me what, I don't know.

18              And if we took it to Framers'  
19      Workshop, they could do it for about  
20      \$30. I remember the cost estimate.  
21      That sounds fine to me, whatever. So  
22      I just, I can't remember these words,  
23      but I'm sure I just asked Donna,  
24      please take care of that. Well,  
25      subsequently then, I was transferred

1 to IIMS. And I just lost track of  
2 the whole process. I really never  
3 knew what happened. I was gone.

4 Q. But Donna had taken care of  
5 getting it framed?

6 A. Yes.

7 Q. Okay.

8 A. At my request. So anyway,  
9 jumping ahead now to when I follow up  
10 this conversation with Conley, he  
11 sends me back an e-mail, well, the  
12 problem is unauthorized expenditure  
13 of the Commonwealth blah, blah, blah.  
14 And in order for you to bring  
15 resolution to this, you owe the  
16 Commonwealth \$69 and whatever.

17 Q. Who actually paid for the, you  
18 know, physically went over and paid  
19 Framers' Workshop and picked up the  
20 frame? Maybe that's where I was  
21 losing the story.

22 A. I'm not sure. I would assume  
23 Donna, but I don't know if I know  
24 that one. I don't know.

25 Q. So you were asked to reimburse

1 the Commonwealth for the frame,  
2 rather than you paying for the frame  
3 and asking the Commonwealth to  
4 reimburse you? Do I have that right?

5 A. You lost me.

6 Q. In other words, you were  
7 saying that you were denied  
8 reimbursement for expenses. So I  
9 thought that maybe you had paid for  
10 the framing and that ---

11 A. I did.

12 Q. --- you wanted them to  
13 reimburse you, as opposed to them  
14 saying, you owe the Commonwealth \$69  
15 or whatever it is?

16 A. Well, I think all that  
17 happened. It was paid for,  
18 apparently, which I didn't understand  
19 what the issue was with that. It was  
20 already paid for. But when I talked  
21 to Conley, he was really ticked about  
22 all this. What's the big deal?  
23 Well, in order to make this  
24 --- I said, you mean to tell me this  
25 hasn't been given to Sergeant

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1 Hillegass over \$69? I'll go out and  
2 pay for it myself. And he said,  
3 well, you're going to have to.

4 So I drove out there, took my  
5 checkbook, walked into his office. I  
6 said I'm here to pick up or I stopped  
7 and they said I could go in or  
8 whatever. And I said I'm here to  
9 pick up the commendation and he says,  
10 do you have the money? I said you're  
11 not even going to let me see it until  
12 I give you a check and he says, no.  
13 I said, well, I want a receipt for it  
14 then.

15 Q. So you paid the state police?  
16 Somebody else had paid Framers'  
17 Workshop?

18 A. I wrote a check out to the  
19 Commonwealth of Pennsylvania.

20 Q. Okay. I get it now.

21 A. In the same office where he  
22 has had probably everything in there  
23 framed by the Commonwealth.

24 ATTORNEY BAILEY:

25 Do you have any

1 evidence that the Commonwealth  
2 had paid for the \$69?

3 A. Yes. Yes, there was a Visa  
4 receipt, I think. It had been paid  
5 for. I remember Donna had signed  
6 something, but I'd have to check.  
7 There was some discussion about all  
8 this now. I said, look, I'm just  
9 trying to understand what the big  
10 deal is, because he was really livid  
11 with me about this money. And he  
12 said how inappropriate it was. And I  
13 said, this is something that --- this  
14 type of thing is quite common, I  
15 would suggest. Well, did I do  
16 something wrong? Well, blah, blah  
17 --- are you initiating disciplinary  
18 action against me? Well, no. Well,  
19 then, why all of a sudden after these  
20 many months is this even being an  
21 issue?

22 Well, then he wanted to talk  
23 about the FBI investigation and how,  
24 in his opinion, I screwed things up.  
25 And I should have notified him and

1     blah, blah, blah.    I said, look  
2     Major, I don't want to discuss that  
3     with you.    Okay.    I've already filed  
4     a grievance and I don't think that's  
5     appropriate.   And he started to try  
6     and tell me what a good guy he's been  
7     to me and the fact that he withheld  
8     doing my performance evaluation  
9     because he wanted to clear his head  
10    and he wanted to make sure he did it  
11    right.    Rationally that can't be  
12    right.    It was due long before the  
13    FBI - - - .

14    BRIEF INTERRUPTION

15    BY ATTORNEY GUIDO:

16    Q.       He said he considered?

17    A.       He considered taking the  
18    commendation out of the frame and  
19    then using the frame in some means in  
20    BPR.    I remember he said that to me.  
21    I said, well, if you want to do that,  
22    that's fine, I don't have a problem  
23    with that.    So I handed it back to  
24    him.    And when I did that, he even  
25    got angrier.   He said, no, I changed

1 my mind. I'm not going to do that.  
2 He was essentially telling me he had  
3 considered recycling this, ripping  
4 the commendation out and recycling  
5 this in order to keep it there. I  
6 said, well, that's fine. So the end  
7 result was I was forced to pay for  
8 that, which I also grieved.

9 Q. Okay. And other than the  
10 frame, were there other expenses?

11 A. Yes. Oh, I'm sorry. On this  
12 instance, no.

13 Q. That Colonel Conley didn't  
14 deny any other?

15 A. No.

16 Q. Okay.

17 A. I also considered Colonel  
18 Conley to be a part of these other  
19 investigations, in that as the  
20 director of BPR, he, I assume you're  
21 asking --- I think your question  
22 originally way back was acts of  
23 vengeance and what have you?

24 Q. Yes.

25 A. I'm not foregoing his role as

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1 the director of BPR in these illegal  
2 investigations that were conducted on  
3 me, as well.

4 Q. Okay. Now, in paragraph 46,  
5 they're separated out by letters. So  
6 we'll look at 46A. And you've  
7 indicated that the transfer to  
8 Washington, Pennsylvania, was a  
9 hateful attempt to separate you from  
10 your children. And I just was  
11 wondering how your children came in  
12 to any of this?

13 A. How my children?

14 Q. Yes. Do you know what I'm  
15 saying is like, how did Evanko ---  
16 what would make Evanko think, if I  
17 transfer him, then it's going to be a  
18 big problem for his children or ---  
19 do you see what I'm saying? You  
20 don't understand my question?

21 A. Actually, I'm quite shocked,  
22 Ms. Guido, to be honest with you. It  
23 almost seems like a question you  
24 ought to ask him. The man knows ---.

25 Q. Why would your children be

1 part of his motive? Do you think his  
2 motive --- what makes you think he  
3 was motivated by a desire to separate  
4 you from your children, as opposed to  
5 some other motive?

6 A. They would all be equally  
7 evil, in my mind.

8 Q. I guess I'm just wondering if  
9 anybody ever said anything to you,  
10 like, you know, Evanko wanted to put  
11 you away from your kids or he told us  
12 he was laughing about it at the bar,  
13 whatever? I was wondering if there  
14 was --- do you see what I'm trying to  
15 say?

16 A. That's a better question for  
17 me to answer.

18 Q. Okay.

19 A. No. No one has ever come up  
20 to me and said, he's looking to  
21 separate you from your children.

22 Q. So nobody ---?

23 A. But the end result, as I've  
24 said before, speaks for itself. He  
25 knows I have kids. He knows I have

1 little children. My kids, when they  
2 were three and four and five years  
3 old, we used to take them to have  
4 their picture taken with him at the  
5 farm show on his horse. And he has  
6 ---

7 Q. I apologize for the inept  
8 question.

9 ATTORNEY BAILEY:

10 Let him answer the  
11 question.

12 BY ATTORNEY GUIDO:

13 Q. Sorry.

14 A. --- autographed those pictures  
15 with words to the effect of, my kids  
16 being a part of the state police  
17 family.

18 Q. Okay. So back to what I was  
19 getting at and that is, other than  
20 the effect of the transfer being that  
21 you would be far from home, you don't  
22 have any other --- don't know of any  
23 other facts that would show that that  
24 was his motivation, to separate you  
25 from your kids?

1 A. I think the act in and of  
2 itself, of the transfer, knowing what  
3 I've just described to you, speaks  
4 for itself.

5 Q. Okay. Now, on 46B, you've  
6 complained about ---.

7 A. Can I ---?

8 Q. Sure.

9 A. I feel like we're not on the  
10 same page with respect to my family.  
11 This 210-mile transfer took my life  
12 with my family away from me, had they  
13 gotten away with it. At that time,  
14 my kids were four and five and twelve  
15 years old. I have boys. I've been  
16 very fortunate. And my wife is a  
17 stay-at-home mom. This was taking  
18 over my life with this transfer, a  
19 transfer that I didn't request.

20 As opposed to every other  
21 transfer I've had in my 18, 19 years  
22 at this point, they were by request  
23 or they were promotional  
24 opportunities that I either accepted  
25 or I declined, based on family. I

1 have never been involuntarily  
2 transferred anywhere. This little  
3 charade would have taken control of  
4 my life. When I talked to Zapinka  
5 that night, he was very specific. He  
6 told me --- this is January 10th,  
7 after Conley called me. He was very  
8 specific and told me that I was only  
9 going to be entitled to 30 days  
10 reimbursement, which is consistent  
11 with regulations. He told me there  
12 were no sleeping arrangements in all  
13 of Area 3, which I know to be  
14 patently false. But he told me I  
15 would not be permitted --- there were  
16 none, I would not be permitted to  
17 sleep anywhere.

18 Q. What do you mean by sleeping  
19 arrangements?

20 A. Bedrooms in the barracks.

21 Q. Okay.

22 A. He then told me that I would  
23 have to seek my own --- after my 30  
24 days travel subsistence ran out, I  
25 would have to seek my own living

1 arrangements, which they would be  
2 generous enough to help me find  
3 arrangements. I was a member of the  
4 baseball association in two different  
5 wards. I coached my kids. We chose  
6 the lifestyle that we lead, based on  
7 the neighborhood, you know, typical  
8 things that you might expect upper  
9 middle class people to choose and  
10 enjoy.

11 This transfer completely  
12 turned my life upside down and took  
13 control. This was the department.  
14 And this is the most hateful thing  
15 I've ever seen our department do and  
16 it's a disgrace. I just want you to  
17 know how adamant I am in what a  
18 disgraceful abusive act this was.

19 Q. I know you just said you've  
20 been fortunate enough not to have any  
21 other transfers that you didn't want.

22 A. Correct.

23 Q. But other members of the state  
24 police have been transferred before,  
25 without wanting the transfer; isn't

1 that right?

2 A. I'm not suggesting I'm the  
3 only one that's ever been abused this  
4 way. I do note under our transfer  
5 regulations, under the FR 3.3, it  
6 specifically states transfers are not  
7 to be used in lieu of discipline.

8 ATTORNEY BAILEY:

9 That's 3.3, Subsection  
10 C, 3.3.

11 BY ATTORNEY GUIDO:

12 Q. Since you brought up the  
13 conversation with Major Zapinka on  
14 January 10th, I wanted to skip  
15 forward to that a little bit.

16 A. Yes.

17 Q. And that was when, I guess,  
18 you called him at home?

19 A. Yes.

20 Q. Were you calling out of the  
21 blue or were you returning calls from  
22 him?

23 A. I initiated the call. It's  
24 possible that he wasn't there the  
25 first time I called. I either called

1 back or --- I initiated this  
2 conversation.

3 Q. That's what I was asking.

4 A. Yeah.

5 Q. I didn't know if he called you  
6 and you called him back or ---?

7 A. No, no.

8 ATTORNEY BAILEY:

9 Who was that with?

10 A. Major Zapinka.

11 ATTORNEY BAILEY:

12 Major Zapinka. Thank  
13 you.

14 BY ATTORNEY GUIDO:

15 Q. Just tell me about that  
16 conversation. You told me some of  
17 it.

18 A. I called Major Zapinka. I  
19 told him I had ---. The chronology  
20 of the events on January 10th were  
21 this. At 12:30 I had a step-one  
22 grievance hearing before Conley on  
23 one of the grievances I filed. At  
24 1600 or 4:00 p.m., he calls me and  
25 tells me I'm being transferred to

1 Washington. And I asked him specific  
2 questions. What's my assignment? I  
3 don't know. How long am I going to  
4 be there? I don't know. Why am I  
5 being transferred? I don't know.  
6 All I got was vague answers. And he  
7 referred me to either Major Zapinka  
8 or the commissioner. Well, I figured  
9 my best chance of getting any  
10 reasonable answers would be out of  
11 Zapinka. So I called him at home. I  
12 had his number by virtue of my PEMA  
13 assignment. We have contact  
14 information for all the advanced  
15 staff or we did.

16 So I called him and I let him  
17 know that I had received --- had this  
18 conversation earlier in the afternoon  
19 or late afternoon, whatever, with  
20 Major Conley. And I wanted to know  
21 what my job in Troop B, Washington  
22 was supposed to be. And his response  
23 to that was I have no idea. He said,  
24 I didn't ask. I asked, I said, did  
25 you ask for me, Major, and he said,

1 no, he did not. I said, what do you  
2 know about this transfer? And he  
3 said, I got a call last week from  
4 Westcott and he said you're getting  
5 Ober. I said, how long am I going to  
6 be out there? And he said, I have no  
7 idea.

8 He said there's a lot to learn  
9 out here, you know, you can visit  
10 stations and you can learn about  
11 being troop commander and blah, blah,  
12 blah. And you be a good boy,  
13 basically, and I'll put in a good  
14 word for you.

15 Q. Did you --- I'm sorry.

16 A. I said, wait a minute, what is  
17 my job assignment? He said, well,  
18 you're just going to assist me, I  
19 guess. He said, we'll work on that  
20 when you get here is what he said.  
21 Well, I said, we both know what this  
22 is all over, Major. This is all over  
23 that FBI investigation. And he said,  
24 I'm not getting in the middle of  
25 that.

1 Q. Did the two of you discuss the  
2 National Governors' Association at  
3 all?

4 A. He mentioned it in passing  
5 when he rattled off a number of  
6 things about the area. And I believe  
7 he said, words to the effect of, you  
8 know, either Troop B or one of the  
9 troops is the largest or this is the  
10 largest area. And he said, there's a  
11 number of things to learn. And he  
12 mentioned that as an incidental, oh,  
13 by the way, the NGA is scheduled for  
14 this year. It's a large commitment  
15 of our resources. Yes, that was  
16 mentioned.

17 Q. Did he make any offer to let  
18 you come in late on Mondays or go  
19 home early on Fridays or anything  
20 like that?

21 A. In that conversation,  
22 absolutely not. He was very clear  
23 that my time to report was eight  
24 o'clock Monday morning and departure  
25 was from Troop B, Washington, by the

1 way. In subsequent e-mail, he made  
2 an offer for me to be --- I think it  
3 was words to the effect of when my  
4 first day to report was whenever that  
5 was going to be, I think he said, his  
6 response was, well, I'll see you at  
7 noon.

8 Q. Were you keeping any notes of  
9 your conversation with him?

10 A. I think I did at the time.

11 Q. Do you still have any notes of  
12 your conversation with him?

13 A. I very well could.

14 Q. Okay. And did you talk with  
15 him again?

16 A. No. That's the only --- no, I  
17 don't think I ever had a conversation  
18 with him. We had e-mail dialogue.  
19 But I never had a ---.

20 Q. E-mail. Well, did you --- I  
21 know you were supposed to report  
22 there on, I believe, January 28th.  
23 Was it e-mail or phone conversations  
24 where you had a conversation with him  
25 about taking a few days off?

1 A. E-mail. I don't think we ever  
2 spoke after that, after the 10th.

3 Q. And so it was then during the  
4 e-mail that he said that he made an  
5 offer about coming in late, going  
6 home early, that kind of thing?

7 ATTORNEY BAILEY:

8 Before you respond,  
9 wait, please.

10 BRIEF INTERRUPTION

11 A. No. There was never a  
12 discussion about going home late.  
13 There was one e-mail when --- I think  
14 what had happened was, I put in for a  
15 couple days' leave, right at the  
16 beginning of that transfer period.  
17 The transfer would be effective ---  
18 practically speaking, it would affect  
19 Monday. I think I might have had a  
20 request for that Monday or Tuesday.  
21 And I e-mailed him, letting him ---  
22 probably asking permission or  
23 whatever. And I think his response  
24 said, okay, or great, see you about  
25 noon on whatever that next day was.

1 That's the only conversation we ever  
2 had about reporting times, other than  
3 what I've just testified to.

4 BY ATTORNEY GUIDO:

5 Q. Now, were these e-mails going  
6 back and forth at work?

7 A. Yes.

8 Q. Did you have any discussion  
9 with him by phone or by e-mail about  
10 the first week coming all the way out  
11 to Washington, going and stopping at  
12 Troop G?

13 A. Yes.

14 Q. And what was that discussion?

15 A. He --- well, to back up, the  
16 yo-yo that I was on, I was notified  
17 on January 6th by Major Waugh that I  
18 was being returned to internal  
19 affairs. After my grievance hearing  
20 the same day, then Conley called me  
21 and tells me I'm going to Troop B,  
22 Washington. But I was not going there  
23 right away. I was supposed to go back  
24 to --- I think I skipped that part,  
25 which I apologize. He told me I was

1 to report back to internal affairs on  
2 January 24th, I think that was  
3 Monday, for five days. And then I  
4 was to report to Troop B, Washington.

5 So during an e-mail exchange  
6 with Major Zapinka, he said that he,  
7 in conversation with Major Conley, he  
8 wanted to know if it would be  
9 uncomfortable for me to go back to  
10 internal affairs for that week and,  
11 if so, I could visit stations in  
12 Troop G for that period of time. To  
13 which I think I responded, well, if  
14 you believe what they're saying,  
15 there shouldn't be anything  
16 uncomfortable. But since we all know  
17 what this was really about, of  
18 course, it would be uncomfortable. I  
19 was kicked out of my command for no  
20 legitimate reason.

21 So I said, yes, I would just  
22 as soon not report back to internal  
23 affairs. But it made no sense to  
24 tell a captain to go visit stations  
25 when they're not the commanding

1 officer. What do you do? It's  
2 parading me around like the village  
3 idiot. I'm not going to suffer that  
4 humiliation if I don't have to. And  
5 more importantly, I said to Major  
6 Zapinka in those exchanges, that with  
7 all due respect, it's a far better  
8 investment of my time to keep doing  
9 what I'm doing on the IIMS project,  
10 since I was being kicked out of  
11 there, too, before that project was  
12 completed. So I stayed there and  
13 kept working on the project that I  
14 was originally assigned to do.

15 Q. Now, did you ever have a  
16 conversation, you were mentioning  
17 about Troop G, and I know that the  
18 National Governors' convention was  
19 held in State College.

20 A. Yes.

21 Q. I think that's around that  
22 area; right?

23 A. Yes. That would be relative  
24 --- a lot closer to my home, than  
25 Troop B, Washington, ma'am.

1 Q. And I was wondering whether  
2 you and Zapinka ever discussed you  
3 being able to sometimes work out of  
4 Troop G?

5 A. Never.

6 Q. Do you know what arrangements  
7 that Major Zapinka may or may not  
8 have made in anticipation of your  
9 transfer, you know, for you to have a  
10 work space, that kind of ---?

11 A. I know that he said that he  
12 would make sure there was a work  
13 space at Troop B, and a parking space  
14 at Troop B, Washington.

15 Q. Were you going to have a car?

16 A. Yes. They didn't take my car.

17 Q. That's why I didn't know  
18 whether you have to drive your  
19 personal car back and forth or if you  
20 would have ---?

21 A. No. I did take my --- Conley  
22 did demand that I turn in my turnpike  
23 credit card. They wouldn't allow me  
24 to use that until I got to Troop B,  
25 since the officer who replaced me,

1 Captain Brown, wouldn't need that  
2 card. When he sent that list of  
3 items that you referred to about  
4 turning in, I called him and said,  
5 well, can't I at least keep the  
6 turnpike card in order to get me to  
7 Washington? And he said, no, pay out  
8 of your pocket and submit for  
9 reimbursement. I said, but the  
10 officer who's here doesn't need it.  
11 No, absolutely not.

12 Q. And did Major Zapinka ever say  
13 anything to you to the effect of, you  
14 know, he knew that this was going to  
15 be a difficult situation for you  
16 because you really didn't want to be  
17 out there, anything like that?

18 A. Yes.

19 Q. What was that? Was that  
20 during that first discussion or  
21 subsequent discussions?

22 A. No. We only had one  
23 discussion. The only other  
24 discussion we had in this time frame  
25 would have been when he chewed me out

1 at the academy. He confronted me in  
2 April --- no, that's not right.

3 Q. April of 2000?

4 A. No. Give me a minute here.  
5 In August of 1999, right around that  
6 time period. At an IT steering  
7 committee meeting, I saluted Major  
8 Zapinka when he walked by me and  
9 didn't acknowledge me, only turned  
10 and said, I want to talk to you at  
11 the break. And at the break he  
12 ordered me into the officers' mess  
13 and proceeded to confront me about  
14 the FBI investigation and why I  
15 didn't call him and why he wasn't  
16 contacted and how dare I doubt his  
17 integrity. And he was all over me,  
18 up one side and down the other about  
19 that whole business.

20 Q. Was that because he was the  
21 area commander where Stanton was  
22 located? I'm wondering what he said  
23 to you about why he would have called  
24 you? Why did he think you should  
25 have called him?

1 A Because yes, he would have  
2 been the Area --- as he is now, still  
3 the Area 3 commander.

4 Q. So he was the Area 3  
5 commander?

6 A. Yes.

7 Q. And Stanton is in Area 3?

8 A Not any more.

9 Q. He was at the time. Okay.

10 A. I think I lost your question,  
11 though. You had asked me what?

12 Q. I may have lost it, too. I  
13 was just asking about whether or not  
14 you had had any other conversation,  
15 any conversation with him where,  
16 essentially, he was saying to you,  
17 you know, I know it's going to be  
18 difficult, but I'll do what I can to  
19 help you.

20 A. That night, when I called him  
21 that night, he said to me, he  
22 realized the position I was in. He  
23 wasn't getting in the middle of  
24 anything. He knew there was a rift  
25 between Evanko and I and he knew

1 exactly why I was being sent out  
2 there. And he said he would do what  
3 he can for me. But he was very clear  
4 that where I was to report from work  
5 --- that where I was to report to  
6 work, when I was expected to report,  
7 how long I was expected to be there.  
8 And it was very clear about the hotel  
9 accommodations that that would run  
10 out after 30 days.

11 He was also, I'm sure,  
12 perceptive enough to know that,  
13 according to our own regulations,  
14 unless a transfer is a temporary  
15 transfer or indicates otherwise, that  
16 by regulations, they're to be  
17 considered permanent. So when that  
18 personnel order came out, applying  
19 our regulations to that personnel  
20 order, that was a permanent transfer.

21 Q. Is there something different  
22 between a transfer and an assignment?  
23 I noticed on a lot of the --- the  
24 reason I'm asking this question is I  
25 noticed on a lot of the personnel

1 orders where they have lists of  
2 people, and some will say this person  
3 is transferred and others will say,  
4 this person is assigned. They're all  
5 a list. But sometimes they'll use  
6 the term transferred, sometimes they  
7 use the term assigned. Is there a  
8 difference between those under your  
9 regulations?

10 A. Not to my knowledge. If you  
11 go to work on Friday and you're  
12 somewhere different on Monday, I  
13 guess you've been transferred.

14 Q. I just wondered if there was  
15 significance to the state police that  
16 I, you know, as a non-state police  
17 person, would not know the difference  
18 between by some of them saying  
19 transfer and some of them say  
20 assignment?

21 A. I never heard that discussion,  
22 no.

23 Q. Okay. But during your  
24 conversation with Major Zapinka, you  
25 didn't get the impression that he

1 personally was out to make your life  
2 miserable; did you?

3 A. I got the impression that  
4 Major Zapinka was on the receiving  
5 end of a phone call just exactly as  
6 he described, you're getting Ober.  
7 Now, whether he was told exactly how  
8 to handle me once I was supposed to  
9 get there or not, he didn't say.

10 Q. And he was polite enough to  
11 you? Was he polite? You know, you  
12 said during that conversation ---  
13 I'm trying to get an idea of the tone  
14 of the conversation.

15 A. Major Zapinka was --- Major  
16 Zapinka was polite to me. That was a  
17 very difficult conversation for me to  
18 have then. When I picked up that  
19 phone on January 10th and Conley was  
20 on the other end, my wife happened to  
21 be sitting by my side, and when I  
22 told Kim what I had been told, she  
23 broke down.

24 Q. If you want to take a break,  
25 we can. Would that be helpful?

1 A. And asked me why are they  
2 doing this to us. And I was unable  
3 to give her an answer, beyond what  
4 she already knew. So the answer to  
5 your question about Major Zapinka is,  
6 that was a very emotionally charged  
7 conversation for me. And he was a  
8 professional to me.

9 Q. Okay. Now, on paragraph 46B,  
10 you've alleged that you suffered  
11 demeaning career injuring transfers  
12 and constructive demotions that have  
13 destroyed your reputation and  
14 effectiveness. So I'd kind of like  
15 to break that down a little bit and  
16 make sure I understand what transfers  
17 and demotions we're talking about.  
18 If there's any transfers or demotions  
19 that we have not discussed yet, that  
20 are encompassed by that paragraph.  
21 So what were your references there?

22 A. Well, I don't believe there  
23 are any transfers that we haven't  
24 covered. The career damage and  
25 demeaning transfers would start with

1 the first transfer from the IIMS  
2 project back to internal affairs to  
3 Troop B, Washington. And then a  
4 demotion and a transfer to the  
5 central section command of LCE.

6 Q. And then how long were you the  
7 central section commander at LCE?

8 A. About four months.

9 Q. And then since then, your  
10 current position, I hate to say, I  
11 know you're the director of  
12 something, but ---.

13 A. Administration.

14 Q. Is that a division of the LCE?

15 A. Two divisions, operations and  
16 administration.

17 Q. And I guess, within that, then  
18 there's the central section, western  
19 section; is that --- I think you were  
20 telling me that earlier in the day  
21 about there being three different  
22 regions.

23 A. In the operations division,  
24 there are three sections, correct.

25 Q. Okay. And those are broken

1 out regionally?

2 A. Yes.

3 Q. All right. Now, you talk  
4 about those transfers, et cetera,  
5 having destroyed your reputation and  
6 effectiveness. In what way do you  
7 think that your reputation has been  
8 destroyed?

9 A. It probably would be shorter  
10 if we talked about in what way my  
11 reputation hasn't been destroyed. Do  
12 you want to start there and work  
13 backwards?

14 Q. We could do it that way, you  
15 know, if you ---.

16 A. Well, ma'am, you don't  
17 understand. This is a paramilitary  
18 organization and it's run by command  
19 personnel who rise through the ranks,  
20 people such as myself. When I made  
21 captain, I believe I was the youngest  
22 captain in the state. Let me  
23 backtrack, with the possible  
24 exception of Jack Miller. I think  
25 that most folks who know me and know

1 my work ethic, know my reputation and  
2 character, understand a whole lot  
3 about me and what my abilities are.

4 And I would like to think that  
5 that was one of the reasons I was  
6 selected to be a part of the IIMS  
7 project. When you take someone who's  
8 on the career path and has the  
9 credentials that I have, and you put  
10 the title special projects by their  
11 name and put it on a personnel order,  
12 and whether it's a transfer or  
13 assignment or I don't care what, in  
14 our organization, that's the penalty  
15 box. You have just killed their  
16 career. You have just singled them  
17 out and you've told the whole entire  
18 6,000 personnel organization, that  
19 this person's in the box, they're in  
20 trouble, they're a screw-up, and  
21 you've also told them if you  
22 associate with them, you're likely to  
23 meet with the same fate.

24 And that's what these people  
25 did to me. When I defeated that

1 transfer to Troop B, Washington, I  
2 was offered, by way of settlement, in  
3 exchange for dropping grievances and  
4 any future actions, I was offered the  
5 transfer to the LCE, central section  
6 command, which attorneys being  
7 professionals, my response --- my  
8 word-for-word response never made it  
9 to paper. But it wasn't flattering.  
10 And the first words out of mouth  
11 were, that's a demotion, are you  
12 telling me they're out of their  
13 minds? They had a chance to fill  
14 that vacancy. Houston Williams, the  
15 lieutenant that was in that position  
16 was arrested on January 10th or  
17 January 11th.

18 Again, with all due respect to  
19 Major Koscelnak, if it was such a  
20 critical important position, I would  
21 have expected them to fill that on  
22 January 29th, along with the rest of  
23 the promotions when they tried to  
24 ship me to Washington. But they  
25 didn't. They left it vacant. They

1 had no idea. There could have been  
2 no way they would have been able to  
3 predict they needed to keep that spot  
4 open for me. The people on the  
5 project where I was assigned, the  
6 IIMS project, from the project  
7 executives right up through and to  
8 include Colonel Hickes, all wanted me  
9 there working on the project,  
10 completing my assigned duties, which  
11 is what I was put there for. But I  
12 was summarily removed from that.

13 And the career damage and the  
14 effect of demotion, not only was an  
15 indicator to people within the  
16 organization, but the people I was  
17 dealing with outside the  
18 organization. I was a part of a  
19 project committee. And on that  
20 committee were deputy secretary-level  
21 individuals. Now, Barb Shelton comes  
22 to mind, from DGS, Mr. Greenwood,  
23 all of the vendors that we dealt  
24 with. I was the face of that part of  
25 that project. That was the key piece

1 in the technology project was the  
2 systems integrator contract. I was  
3 the point of contact. I was the  
4 ranking officer. I was that project  
5 to those vendors. And when I was  
6 removed, it was humiliating. Because  
7 people would ask the obvious  
8 question, well, why are you being  
9 transferred? What's going on? Some  
10 big project out there, what was I  
11 supposed to say? No. No, I'm being  
12 sent out there to visit stations.  
13 Hell, I was in Troop B for four  
14 years. I know where all the stations  
15 are. I don't know what I'm supposed  
16 to visit. I already know that.

17 So all this was unbelievably  
18 --- it was the lowest point in my  
19 career, ma'am. And being sent to a  
20 section command. As I said, we're a  
21 paramilitary organization. I was a  
22 section commander eight or nine years  
23 ago as a lieutenant. That's a  
24 lieutenant's position.

25 Q. Okay. I'm sorry.

1 A. That's okay.

2 Q. I was thinking area command.

3 A. No, no. I was a section  
4 commander. And our regulations, and  
5 I believe it's AR 1-11, indicate that  
6 sections are to be supervised or  
7 commanded by lieutenants, not  
8 sergeants, not captains, but  
9 lieutenants. Excuse me. I didn't  
10 mean sergeants. Sergeants can be  
11 acting. And in the case of LCE,  
12 that's exactly what was occurring.  
13 Houston Williams, the former section  
14 commander, was transferred in  
15 September of '99, or thereabouts,  
16 because of an allegation of sexual  
17 harassment. Sergeant Valencik  
18 (phonetic) was put in an acting  
19 status and ran that section for  
20 several months. They didn't feel a  
21 need to bring in a captain then.  
22 They put Sergeant Valencik in it.  
23 And when I left the position, they  
24 brought in a new lieutenant, meaning,  
25 somebody who had been a sergeant the

1 day before.

2 So there was never an issue  
3 about, is there a need for a captain.  
4 That section wasn't even created  
5 until 1994. It's the smallest  
6 section in LCE. When the LCE was  
7 first created, there was only an east  
8 and a west section.

9 Q. I'd just like to back up to  
10 the special projects officer, because  
11 essentially you said that when that's  
12 the title that you're given, the  
13 special projects officer, that's sort  
14 of like the kiss of death on your  
15 reputation or whatever.

16 A. The culture of our  
17 organization is and the instances  
18 that I can think of, people that have  
19 been brought in for special projects  
20 are in trouble.

21 Q. Would that be the case with, I  
22 think, Cynthia Trance (phonetic) who  
23 was sent to Philadelphia as a special  
24 projects officer to that area  
25 commander, around the same time

1 frame? Was that your information  
2 that that was some type of punishment  
3 for her?

4 A. If you compare the documents,  
5 you'll see the difference. The  
6 document that sent me to Troop B,  
7 Washington says special projects  
8 officer. This myth about the NGA,  
9 was created after the injunction was  
10 filed. The next personnel document  
11 --- the next personnel order that was  
12 released by the department then  
13 flowered this up. I don't think  
14 there's any question that Captain  
15 Trance, who's not in trouble, in  
16 fact, I would suggest quite the  
17 opposite. But they don't compare.

18 I know that the Defendants are  
19 quite --- I'm sure they are very  
20 hopeful that that comparison will  
21 hold. But once you --- I would like  
22 to scratch below the surface of that  
23 whole issue with you, because they  
24 don't compare. They don't even  
25 compare on paper.

1 Q. And do you think if her  
2 paperwork, if I would find that,  
3 would be something different?

4 A. Oh, yes.

5 Q. I have not seen her paperwork.

6 A. I assure you it would be quite  
7 different.

8 Q. Okay.

9 A. I've mentioned to you the  
10 financial impact that this  
11 disciplinary transfer was going to  
12 have on my family. I also would like  
13 you to recognize or at some point  
14 understand that the individual who  
15 was selected to take my place  
16 received a promotion for that  
17 position, which by now we know means  
18 it's not required. It's optional.  
19 But with that promotion and his  
20 enlistment date, that would mean a  
21 \$7,000 a year pay raise for him. I  
22 was not going to be the benefactor of  
23 such a promotion or windfall.  
24 Q. Okay. Now, back to the  
25 allegation that your reputation was

1 destroyed and you mentioned about  
2 the, you know, special projects  
3 officer. I understand the point  
4 you're making with respect to people  
5 that don't necessarily know you in an  
6 organization that large. But other  
7 people that know you and worked with  
8 you closely on these projects that  
9 you're discussing, your reputation  
10 among them would still be good;  
11 wouldn't it?

12 A. In some cases.

13 Q. For example, the people that  
14 you worked with on the IIMS project?

15 A. Well, I'm not quite sure what  
16 the question is, but I'll try it.  
17 There's a stigma that's associated  
18 with being the one in the box. While  
19 privately or in some other area  
20 people might, or one on one,  
21 acknowledge that you're still a  
22 pretty good guy and all of those  
23 things, the reality is when you have  
24 the target on your back and when  
25 they've attached a stigma to you,

1 human nature being what it is, many,  
2 many individuals will make sure that  
3 that association is kept private or  
4 they will make sure that, you know,  
5 you're ostracized. Go to meetings  
6 and you're the person that no one  
7 wants to sit with or there's  
8 continual references about that.  
9 That just happened to me yesterday at  
10 the PeachTree when I went there for  
11 lunch. Oh, gee, we didn't know you  
12 were going to be here, hope the  
13 commissioner doesn't come by.

14 Q. Is the PeachTree a restaurant?

15 A. Yes, it's a restaurant on  
16 Progress Avenue.

17 ATTORNEY BAILEY:

18 Near the intersection  
19 of Walnut Street.

20 BY ATTORNEY GUIDO:

21 Q. I'm not a Harrisburg-familiar  
22 person. Sorry. I'm Cumberland  
23 County side.

24 A. So the reputation, many folks  
25 or --- it hasn't been the case that

1     there hasn't been anyone that still  
2     --- that believes these things. As  
3     was said to me the other day, this  
4     transfer, that planned disciplinary  
5     transfer is something that everyone  
6     in the agency knew what it was when  
7     they read it in print. They knew  
8     ---.

9     Q.         Who said that?

10    A.         Major DeWire.

11    Q.         Now, in paragraph C there of  
12    46, you talked about being denied  
13    opportunities for overtime?

14    A.         Yes.

15    Q.         What overtime opportunities  
16    were you denied?

17    A.         I have been denied principally  
18    through my PEMA assignments.

19    Q.         That's what I was wondering.  
20    Is there anything other than PEMA?  
21    Because that would give you the  
22    opportunity.

23    A.         That would give me the  
24    opportunity. I've also been denied  
25    the opportunity to act in the role of

1 acting bureau director since my  
2 ascent back to a captain's job in LCE  
3 as division director of  
4 administration.

5 Q. Hasn't Major DeWire made you  
6 acting bureau director a few times?

7 A. Five days, when Captain  
8 McDonald wasn't available.

9 Q. Okay.

10 A. Captain McDonald in the last  
11 year --- I think the last time I  
12 looked at that was actually at the  
13 end of October, so give me some  
14 leeway. But in the last year,  
15 Captain McDonald has acted in acting  
16 capacity, I believe, around 40 days,  
17 maybe 40 some. I've acted in a grand  
18 total of five.

19 Q. Would that be, the decision of  
20 who to name as acting, would that be  
21 Major DeWire's decision?

22 A. Major DeWire and Colonel  
23 Conley --- or Colonel Coury. Sorry.

24 Q. Would Major DeWire need to  
25 consult with Lieutenant Colonel

1 Conley --- I mean, I forget which one  
2 you just told me.

3 A. Coury.

4 Q. Coury in order to decide who  
5 would be the acting director or could  
6 he do that on his own?

7 A. I'm not exactly sure how he  
8 does that.

9 Q. Okay.

10 A. I just know, as I said many  
11 times, I know the end result. We  
12 have department regulations and  
13 there's a governor's management  
14 directive that says that is an  
15 assignment that is, unless --- I  
16 can't remember the exact verbiage ---  
17 peculiar or some set of circumstances  
18 exist. That's an assignment that's  
19 to be equalized among the eligible  
20 participants. And it's also in  
21 addition to taking money out of my  
22 pocket, they're also not affording me  
23 the opportunity, the career  
24 advancement opportunity of learning  
25 the functions of another position.

1 Q. Is that because, do you get  
2 some type of pay differential while  
3 you're the acting bureau director?

4 A. Yes. It costs me over \$30 a  
5 day every time he doesn't name me.

6 Q. And then to be --- the  
7 reimbursements that you're talking  
8 about in that paragraph C, are those  
9 different reimbursements than we've  
10 discussed before the frame?

11 A. No.

12 Q. Then with respect to  
13 paragraph D, when you said you  
14 haven't been allowed to get certain  
15 educational opportunities, what were  
16 those?

17 A. I applied for the police staff  
18 and command school in '99, about the  
19 fall of '99. And it was rejected.  
20 It came back from the deputy  
21 commissioner of administration's  
22 office. I was denied because they  
23 said it was received late, that I had  
24 missed the deadline. Well, I never  
25 knew until I looked through my

1 personnel file that that wasn't the  
2 case at all.

3 Q. What did you find in your  
4 personnel file?

5 A. I found a copy with the note  
6 from Tech Services that said that the  
7 thing was sent over on October 20th.  
8 The deadline was October 22nd. And  
9 the memo I received back said that it  
10 wasn't received until October 28th.  
11 The mail goes once a day. So there's  
12 no possible way that they didn't  
13 receive something for eight days when  
14 the mail is shuffled over there every  
15 day.

16 Q. Did you know what the deadline  
17 was?

18 A. Yeah. I met the deadline. I  
19 put it in or forwarded it to my  
20 bureau director on October 20th.

21 Q. Okay. Did it need to just get  
22 to your bureau director or who did it  
23 actually have to get to by the 22nd?

24 A. As I recall from the special  
25 order or whatever the directive was,

1 it needed to get to --- it was either  
2 the director of personnel or the  
3 director of the --- deputy of admin.  
4 I don't recall which one.

5 Q. And your bureau director at  
6 the time that you submitted it to was  
7 who?

8 A. Major Waugh.

9 Q. And there was --- would Major  
10 Waugh have had any reason to sit on  
11 it?

12 A. None whatsoever.

13 ATTORNEY BAILEY:

14 How do you spell Waugh?

15 A. W-A-U-G-H.

16 BY ATTORNEY GUIDO:

17 Q. Okay. Now, that's the police  
18 command staff school in 1999. What  
19 other educational opportunities?

20 A. I had --- not long after I was  
21 transferred to LCE, Major Koscelnak  
22 --- I'm in the section job now.  
23 Major Koscelnak --- oh, before we do  
24 that, can I go back to the preceding  
25 paragraph?

1 Q. Sure.

2 A. With respect to acting, I'm  
3 not sure if it's that paragraph, but  
4 it might be. With respect to acting  
5 duties, I was transferred to the  
6 Bureau of Liquor Control Enforcement  
7 as a section commander on, I believe,  
8 February 18th. I'm a captain  
9 assigned to a section job, as my  
10 grievance said, of the 69 or 70  
11 section commanders in the state,  
12 they're all Lieutenants, except for  
13 me.

14 Now, shortly thereafter,  
15 within three or four weeks or two  
16 weeks, Captain Campbell, who was the  
17 director of the administration  
18 division, goes on leave. I was not  
19 put in that position. I'm already a  
20 captain and have already been a  
21 division director for five years,  
22 four years. Instead, they brought a  
23 lieutenant from the western section  
24 from Pittsburgh, across the state,  
25 paid him out-of-class wages, put him

1 in my chain of command as a  
2 lieutenant and let him sit there for  
3 a week.

4 When I had my first discussion  
5 with Major Koscelnak after I was  
6 transferred over there, I asked what  
7 I'm sure you would probably say are  
8 the obvious questions, who do I  
9 answer to? Major Koscelnak said you  
10 answer to Captain McDonald. So who  
11 does my performance evaluations?  
12 Captain McDonald. Who's going to do  
13 my leave slips, approve my leave  
14 slips? He said Captain McDonald.  
15 And he said --- he said, do you have  
16 a problem with that? I said, yes, I  
17 have a problem with that. He's a  
18 captain. So this situation that I  
19 was put in is something I've never  
20 seen. And I think some of our  
21 witnesses have already indicated they  
22 haven't seen in some 30 years'  
23 experience on their part.

24 When I was in the section  
25 command job as a captain, Major

1 Koscelnak put out a bureau directive  
2 or bureau memo asking for and  
3 soliciting for interest in attending  
4 a national alcohol symposium  
5 conference in Washington, D.C. And I  
6 believe that it said one of the  
7 section commanders would attend. I  
8 believe that's how it was worded.  
9 But in any event, I expressed  
10 interest, put in a memo to attend  
11 this conference. LCE had sent three  
12 or four or five individuals a year  
13 before to the first conference. This  
14 was the second one. That had all  
15 been approved.

16 I submitted a memo to Major  
17 Koscelnak and he approved it.  
18 Subsequently then, the out-service  
19 training authorizations and  
20 appropriate forms were completed by  
21 someone, I guess the AA. I really  
22 don't know. But anyway, a package  
23 went over to --- or that package went  
24 over to the deputy of operations, who  
25 was Defendant Westcott. And

1 basically, those of us that had put  
2 in for it and had been approved, were  
3 making plans to go, schedule  
4 preparations and what have you.

5 I was then, about again a  
6 couple weeks, I'd have to look at the  
7 documents, but a couple weeks or so  
8 later, I was called in by Captain  
9 McDonald and he said, well, guess  
10 what, you're not going to the  
11 conference and neither is anyone  
12 else. Westcott denied them all. And  
13 at that point, the other individuals  
14 who had been approved, when I seen  
15 them in the hallway, they kind of  
16 snickered and said, thanks a lot, you  
17 know, it's because of you we're not  
18 allowed to go this year. Colonel  
19 Karbowski, I believe, said, yeah, I  
20 guess it would have been too obvious  
21 just to deny you and not everybody  
22 else, so they denied everybody.

23 Q. So nobody went to ---

24 A. So nobody went.

25 Q. --- that conference?

1 A. They went the year before,  
2 when I wasn't there. The year that  
3 I'm there and requested, we don't go.

4 Q. And you said it would be  
5 helpful for you to look at the  
6 paperwork from that?

7 A. Oh, yes. I mean, I can  
8 confirm the dates for you.

9 Q. Can we find them? I'm sure I  
10 have it somewhere.

11 A. Unless I missed something.

12 BRIEF INTERRUPTION

13 ATTORNEY GUIDO:

14 Can we just mark that  
15 as an exhibit. Here's Twelve.

16 (Deposition Exhibit  
17 Number Twelve  
18 marked for  
19 identification.)

20 ATTORNEY BAILEY:

21 While he's looking at  
22 that, Syndi ---.

23 ATTORNEY GUIDO:

24 Yes.

25 ATTORNEY BAILEY:

1 I really --- are you  
2 going to finish by 5:00? I  
3 mean, you're a paragraph ---.

4 ATTORNEY GUIDO:

5 Yes. Well, I had some  
6 other stuff I'd like to cover  
7 after that.

8 ATTORNEY BAILEY:

9 I'd really like to  
10 finish him up today if it's  
11 possible to do so.

12 ATTORNEY GUIDO:

13 We can see how far we  
14 can get.

15 BY ATTORNEY GUIDO:

16 Q. I don't know if this paperwork  
17 is helpful to you at all or not, in  
18 that this is the only paperwork I've  
19 seen about it. At least it gives us  
20 a time frame date. The training was  
21 in June 2000?

22 A. Yes.

23 Q. And as of March 23, 2000,  
24 there's a memo from Major Koscelnak?

25 A. Yes.

1 Q. At what point --- at that  
2 point, it looks like everybody  
3 submitted paperwork and travel  
4 vouchers, et cetera?

5 A. Yes.

6 Q. Does this help you at all in  
7 figuring out when you were told that  
8 the whole deal was off?

9 A. No. Other than it was after  
10 April 18th. Is my memo in here?

11 Q. That's what I was looking to  
12 see what was here. But the bottom  
13 line is this wasn't something that  
14 you chose not to go to?

15 A. Oh, no, I expressed interest.  
16 I put in a memo requesting  
17 consideration and was approved.  
18 Well, here it is. Yeah, this is it.  
19 This is from Koscelnak.

20 ATTORNEY BAILEY:

21 That's page two?

22 A. Yes. On Exhibit Twelve, page  
23 two, this is from Koscelnak to me. I  
24 was the central section commander.  
25 It says you have been approved.

1 BY ATTORNEY GUIDO:

2 Q. Right. And that's what I was  
3 wondering. Did you ever get anything  
4 after this, saying that you had been  
5 disapproved or was it a verbal  
6 conversation?

7 A. Well, Captain McDonald  
8 reported it to me verbally. I think  
9 there was --- I never received  
10 anything personally from anybody, no.  
11 But I think there was something  
12 generated, although, I don't recall  
13 what that was.

14 Q. But you didn't receive  
15 anything in writing saying that that  
16 had been rescinded or whatever?

17 A. I'd have to look to make sure.  
18 I don't think so. I don't think  
19 anything was directed personally to  
20 me. I think the package was just  
21 rejected is my recollection.

22 Q. Were there any other  
23 educational opportunities that you  
24 put in for and were denied?

25 A. No. By this point, having no

1 success, candidly, should any come  
2 along, I really didn't see the point.  
3 It was clear that I was not going to  
4 be selected anyway, so what's the  
5 point.

6 Q. When Captain McDonald said  
7 that no one was going and if you told  
8 me this, I apologize for not  
9 remembering, did he say who made that  
10 decision or who told him?

11 A. It's likely that he did.  
12 Koscelnak would have never said a  
13 word. See, I think something came  
14 from Westcott. Whether it was a  
15 posted, you know, rejected or  
16 whatever, but I was told it was from  
17 Westcott.

18 Q. You were told by Captain  
19 McDonald that Westcott said no?

20 A. That's my recollection. As a  
21 fellow captain, I can't imagine, you  
22 know, it would come from a  
23 subordinate. So he was really the  
24 only peer I would have had to talk  
25 to. Wait a minute, I'm forgetting.

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1 I'm overlooking Captain Campbell. It  
2 could have come from Captain  
3 Campbell. I just don't remember.

4 Q. And Captain McDonald, his  
5 position was?

6 A. Director of operations.

7 Q. Okay. And at that time was  
8 Captain Campbell the ---?

9 A. Director of administration.

10 Q. The job you have now?

11 A. Yes.

12 Q. What happened with him? Where  
13 did he go?

14 A. He came in April, late April,  
15 he came into my office on a Monday  
16 morning and said, you know, I was  
17 driving --- Captain Campbell and I  
18 were promoted together. And he came  
19 into my office, shut the door and  
20 said, you know, I was driving back  
21 from --- I think he has a place in  
22 North Carolina or down south  
23 somewhere. And he said, I was coming  
24 back and I got to the beltway and I  
25 said, you know what, that's it for

1 me. I'm done. He said, I just want  
2 you to know that you're one of the  
3 reasons I'm retiring.

4 Q. And did he say more about why?

5 A. Yes. That was my question.  
6 When someone tells you that, it  
7 raises a level of concern. He said  
8 that he had 28 years on the job, I  
9 think was what he told me. And that  
10 in 28 years he had never seen anybody  
11 treated like they've treated me. He  
12 had a great deal of respect for me.  
13 We were promoted together. We were  
14 peers. I had many occasion to have  
15 conversations by virtue of his  
16 assignments as director of operations  
17 and administration at different  
18 points in the Bureau of Liquor  
19 Control Enforcement.

20 He said he thought what they  
21 were doing to me was a disgrace in  
22 that he had been avoiding the  
23 commissioner for months. Any  
24 opportunity he had, he was avoiding  
25 any kind of face-to-face meeting with

1 him, because his fear was that the  
2 commissioner would ask him something  
3 like, how's things going? And if he  
4 were asked that --- if you know  
5 anything about Captain Campbell, he  
6 would then be obligated to unload  
7 with the truth. And he said he would  
8 have just as soon at that point go  
9 out now before he blew his leg off at  
10 the kneecap. But he said having seen  
11 what they were doing to me was enough  
12 for him. He no longer wanted to be a  
13 part of this organization.

14 Q. And then he retired and then  
15 you moved in to the position that he  
16 had held?

17 A. Eventually.

18 Q. How long was the lag time  
19 there?

20 A. Until I was --- well, he put  
21 his retirement papers in on May 8th.

22 On May 30th, a Tuesday, as I recall,  
23 Major Koscelnak called me. I was at  
24 a conference that we were putting on.  
25 I was not attending as a participant.

1 LCE was putting on a conference in  
2 Bloomsburg. He paged me or  
3 telephoned me and asked me to meet  
4 him at the Bloomsburg Station. And  
5 when I met him at the Bloomsburg  
6 Station, he said that the purpose of  
7 me being called there was that he  
8 wanted to offer me the position of  
9 the director of administration. And  
10 wanted to know if I was interested in  
11 accepting that. And when the  
12 personnel order came out, it was  
13 backdated to, I believe, May 26th to  
14 cover the time that I wasn't ---  
15 hadn't been offered or wasn't named  
16 as the admin division director.

17 Q. Okay. Now, let's see,  
18 paragraph ---.

19 ATTORNEY BAILEY:

20 Darrell, let me just,  
21 while she's checking, federal  
22 rules provide that we have to  
23 make you available for six  
24 hours. Obviously, in fairness  
25 to opposing Counsel, it is a

1 detailed Complaint. There's a  
2 lot to it. Quite frankly, I  
3 don't see how she's going to  
4 be able to finish by 5:00, in  
5 fairness to her.

6 I'm going to suggest  
7 that we proceed until about  
8 4:00 or 4:15, then you and I  
9 talk and see if there's  
10 somewhere where this could  
11 break.

12 ATTORNEY GUIDO:

13 Okay.

14 ATTORNEY BAILEY:

15 Or, you know, I just  
16 can't see pushing on a --- I  
17 know it's very difficult for  
18 you. I understand that. But,  
19 you know, we are the  
20 Plaintiffs. It's our story to  
21 tell.

22 With that in mind, I'm  
23 just wondering, Syndi, if in a  
24 few minutes at least, give  
25 some thought to where you are

1 in the deposition, how much  
2 time to complete, and maybe we  
3 can compromise a few more  
4 hours or something for you.

5 ATTORNEY GUIDO:

6 Okay. That would be  
7 great.

8 ATTORNEY BAILEY:

9 But he's, you know, I  
10 know this guy. And he's  
11 starting to get tired.

12 ATTORNEY GUIDO:

13 And I can --- I know  
14 I'm very tired, too.

15 ATTORNEY BAILEY:

16 You know, it's almost  
17 six hours. And, I mean,  
18 that's tough on anybody, you  
19 know that.

20 ATTORNEY GUIDO:

21 Right. I'll just ---  
22 let me know at the end of the  
23 deposition, whether it's  
24 something that we can work out  
25 or whether I need to file a

1 motion.

2 ATTORNEY BAILEY:

3 We'll work it out. You  
4 don't need to ---.

5 ATTORNEY GUIDO:

6 I'm just saying ---.

7 ATTORNEY BAILEY:

8 Well, you know how ---

9 ATTORNEY GUIDO:

10 You were saying about  
11 the rules. I'm just saying  
12 ---.

13 ATTORNEY BAILEY:

14 You know how reasonable  
15 I am, Syndi. You know what  
16 I'm like. All we have to do  
17 is talk about it and get it  
18 worked out. No problem.  
19 We'll get it worked out.

20 ATTORNEY GUIDO:

21 Well, I mean, to be  
22 honest with you, I have a  
23 couple hours, several hours  
24 more, probably three more  
25 hours of questions.

1 ATTORNEY BAILEY:

2 Yes. That's what I was  
3 thinking.

4 ATTORNEY GUIDO:

5 If you guys want to  
6 break and do it another day,  
7 I'm not pushing to do it.

8 ATTORNEY BAILEY:

9 Well, you know what I'd  
10 like to do? I'd like to  
11 respectfully, because you're  
12 at a hiatus now between  
13 sections, I'd request a five-  
14 minute recess. I'd like to  
15 talk with Darrell and ---

16 ATTORNEY GUIDO:

17 That would be fine.

18 ATTORNEY BAILEY:

19 --- get my client's  
20 permission, approval and  
21 advice.

22 ATTORNEY GUIDO:

23 That's not a problem.

24 ATTORNEY BAILEY:

25 Okay. Thank you.

370

1 MS. LYDE:

2 It's 3:42 p.m. We'll  
3 take a short break.

4 SHORT BREAK TAKEN

5 MS. LYDE:

6 3:54, we're back on  
7 video.

8 ATTORNEY BAILEY:

9 Okay. I might as well  
10 lead on this because I was the  
11 one that made the request.  
12 Let the record show that  
13 during our break, I made a  
14 request of opposing Counsel or  
15 suggestion, should I say,  
16 which she can respond to in  
17 her own words, that because  
18 she's going to need more time,  
19 she's indicated roughly three  
20 hours or so, traffic  
21 conditions, it's been a very  
22 long day for Mr. Ober, that we  
23 break at this point.

24 The only request I  
25 would have, Syndi, is that we

1 get back together. I don't  
2 want a whole lot of time in a  
3 break in his deposition. I  
4 have some time available on  
5 Friday. And usually, it's a  
6 half-way decent day for most  
7 attorneys. And I'm wondering  
8 if it's possible if you need  
9 him three or four hours, we  
10 get back together on Friday.

11 ATTORNEY GUIDO:

12 I need to go check my  
13 calendar.

14 ATTORNEY BAILEY:

15 Okay.

16 ATTORNEY GUIDO:

17 Is that something I  
18 should do now before ---?

19 ATTORNEY BAILEY:

20 No. No, I mean, I can  
21 call tomorrow morning. I've  
22 got to be out of town all day  
23 tomorrow on depositions in  
24 another case. But I would  
25 just like to make that

1 suggestion, if it's at all  
2 possible.

3 ATTORNEY GUIDO:

4 I'll see if I can,  
5 because I know I do have a  
6 bunch of dates during the next  
7 two weeks where I am really  
8 tied up because of another  
9 case that I have. I don't  
10 know offhand what Friday's  
11 like, maybe Friday morning  
12 might ---.

13 ATTORNEY BAILEY:

14 That would be great.  
15 That would be great. And you  
16 can even voice mail my home  
17 phone number, which is in the  
18 phone book. So I don't care,  
19 we might as well depose me on  
20 it. It's 232-7542. Friday is  
21 at your convenience. Darrell,  
22 is that okay with you? Is  
23 that possible?

24 ATTORNEY GUIDO:

25 I mean, I can go check

1 real quick.

2 A. As far as I know.

3 ATTORNEY BAILEY:

4 As far as you know.

5 Okay.

6 A. I'm burning leave, so  
7 whatever.

8 ATTORNEY GUIDO:

9 I mean, Dorothy will be  
10 able to tell me whether I am  
11 or am not. I just have to ask  
12 her.

13 ATTORNEY BAILEY:

14 All right. Then I  
15 guess we could end this. I've  
16 got to, you know, again, I'm  
17 going to do a revised document  
18 request. We're obviously  
19 going to have a disagreement.  
20 I'm going to suggest that  
21 maybe we get with Judge  
22 Caldwell on the issue of the  
23 document request. Because,  
24 again, I don't feel some of  
25 your requirements are fair and

1           you, obviously, feel they are.  
2           We need to work that out.

3                   ATTORNEY GUIDO:

4                   It depends on --- what  
5           are you concerned about,  
6           relevance issues ---

7                   ATTORNEY BAILEY:

8                   Well, I can't go into  
9           them now.

10                  ATTORNEY GUIDO:

11                  --- or the cost?

12                  ATTORNEY BAILEY:

13                  No. Even some of the  
14           mechanics, you know.

15                  ATTORNEY GUIDO:

16                  Okay.

17                  ATTORNEY BAILEY:

18                  I mean, paying labor  
19           --- we're not paying anyone  
20           \$25 an hour to make copies.

21                  ATTORNEY GUIDO:

22                  That's what I was  
23           wondering if the labor ---.

24                  ATTORNEY BAILEY:

25                  I mean, it's not going

1 to happen. But I don't want  
2 to be unreasonable. We'll  
3 talk about it.

4 ATTORNEY GUIDO:

5 Okay.

6 ATTORNEY BAILEY:

7 Okay.

8 ATTORNEY GUIDO:

9 Because I'm not sure  
10 that it's something we  
11 necessarily need to bring up  
12 with the Judge. There are  
13 certain issues that ---.

14 ATTORNEY BAILEY:

15 No, no. I'm saying if  
16 we need to get there, if we  
17 can't work it out. So I'm  
18 going to do some revising in  
19 my request and whatnot. And  
20 then if we need to, we can  
21 just agree in a friendly way  
22 to go to the Judge and say,  
23 hey, Judge, we disagree about  
24 some things.

25 ATTORNEY GUIDO:

1 Okay.

2 ATTORNEY BAILEY:

3 I don't have anything  
4 further. I'd like to thank  
5 you for your cooperation,  
6 though, for today.

7 ATTORNEY GUIDO:

8 No, I don't.

9 ATTORNEY BAILEY:

10 So the deposition is  
11 --- it will be continuing  
12 then.

13 MS. LYDE:

14 3:57 p.m., deposition  
15 of Darrell Ober will be  
16 continued at a later date.

17 VIDEOGRAPHER:

18 Off record.

19

20 \* \* \* \* \*

21 DEPOSITION CONCLUDED AT 3:57 P.M.

22 \* \* \* \* \*

23

24

25

1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF HUNTINGDON )

3 C E R T I F I C A T E

4 I, Bernadette M. Black, a Notary Public in and  
5 for the Commonwealth of Pennsylvania, do hereby  
6 certify:

7 That the witness was first duly sworn to testify  
8 to the truth, the whole truth, and nothing but the  
9 truth; that the foregoing deposition was taken at the  
10 time and place stated herein; and that the said  
11 deposition was taken stenographically by me and  
12 reduced to typewriting, and constitutes a true and  
13 correct record of the testimony given by the witness.

14 I further certify that the reading and signing  
15 of said depositions were (not) waived by counsel for  
16 the respective parties and by the witness.

17 I further certify that I am not a relative,  
18 employee or attorney of any of the parties, nor a  
19 relative or employee of counsel, and that I am in no  
20 way interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand  
22 and stamp this 17 day of January 2002.

23 *Bernadette M. Black*

24 Notarial Seal  
Bernadette M. Black, Notary Public  
Broad Top City Boro, Huntingdon County  
My Commission Expires Jan. 26, 2004  
25 Member, Pennsylvania Association of Notaries

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• CLEARFIELD, PA

• STATE COLLEGE, PA

• HOLLIDAYSBURG, PA

• ERIE, PA

• OIL CITY, PA

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PHILADELPHIA, PA  
WILKES-BARRE, PA  
OIL CITY, PA  
SOMERSET, PA  
CLEARFIELD, PA  
\*CHARLESTON, WV\*

## RESUME

**DARRELL G. OBER**

71 Millers Gap Road  
Enola, Pennsylvania 17025

Home Telephone: (717) 790-0708

Work Telephone: (717) 787-3264

## Department Experience

May 1998 to present - Assigned as the Director, Internal Affairs Division, Bureau of Professional Responsibility. The position involves managing the internal affairs function of approximately 4,100 enlisted and 1,500 civilian personnel. Direct management is provided in the form of leadership to three Sections each comprised of a Lieutenant, three or four investigators, and the administrative staff. Members of the Internal Affairs Division conduct administrative and criminal investigations into the activities of Department members.

March 1995 to May 1998

March 1995 - Promoted to Captain and assigned as the Director, Systems and Process Review Division, Bureau of Professional Responsibility. This position involves supervising the inspection activities of approximately 160 Department components. Oversight is provided in the form of leadership to three Sections each comprised of a Lieutenant and three non commissioned officers. The Systems and Process Review Division is responsible for conducting in-depth inspections of Department personnel and installations. Inspections include evaluations of reporting procedures, policies and procedures, as well as determination of compliance levels of both Department policy and standards established by the Commission on Accreditation for Law Enforcement Agencies. A thorough working knowledge of Department rules, regulations, cultural effects and application of process modeling is fundamental to this position. I am the only remaining charter member of the Systems and Process Review Division. As Division Director, significant accomplishments include a complete rewrite of Operations Manual 7-4, Inspections; creation of the Systems and Process Review Service Evaluation Form; implementation of a training program for property management; establishing a line inspection program for the Bureau of Professional Responsibility; and creation of a Division newsletter for dissemination of internal information.

March 1993 to March 1995

March 1993 - Promoted to Lieutenant and assigned as the Central Section Commander, Systems and Process Review Division, Bureau of Professional Responsibility. My initial administrative responsibilities included developing Department policy, candidate selection criteria, and internal procedures for the newly-created inspection Division. Upon staffing, my duties expanded to include operational responsibilities of the Central Section comprised of Troops F, G, H, all Bureau Headquarters and decentralized components co-located in the aforementioned Troops.

EXHIBIT

# 1

March 1991 to March 1993

March 1991 - Promoted to Sergeant and assigned as Supervisor, Systems and Procedures Section, Programming Division, Bureau of Research and Development. My duties in this position included supervising the development, writing, editing, revising, and staffing of the entire Department directives system; Suggestion Program, Records Management Units, and clerical staff.

August 1989 to March 1991

August 1989 - As a result of a competitive selection process, I was selected and transferred to the Systems and Procedures Section, Programming Division, Bureau of Research and Development, as a staff analyst. My duties included writing, editing, revising, and preparing assigned Department draft directives for the Commissioner.

September 1988 to August 1989

September 1989 - Requested and received a preference transferred to Troop G, McConnellsburg. Performed supervisory functions in the Patrol Unit.

February 1988 to September 1988

February 1988 - Promoted to Corporal and transferred to Troop T, Bowmansville. Performed supervisory functions in the Patrol Unit.

June 1985 to February 1988

June 1985 - Requested and received a preference transfer to Troop G, McConellsburg. Performed general police duties in both the Patrol and Criminal Investigation Units.

September 1983 to June 1985

September 1983 - Requested and received a preference transfer to Troop D, Mercer. Performed general police duties in traffic and criminal investigations.

December 1981 to September 1983

December 1981 - Assigned to Troop S, Mercer. Performed general police duties in traffic and criminal investigations.

July 1981

Enlisted in the Pennsylvania State Police on July 20, 1981.

TRAINING

Advanced In-Service Training, sponsored by the Department, include the following: Radar; Statements and Confessions; Intoxilyzer Certification; Criminal Investigation; Annual Pistol Qualification; Advanced First Aid and Emergency Care Courses; Operation Whiteline; Aids Awareness; Stress Management; Ethnic Intimidation and Intimidation; and...

Interview and Interrogation Technique Course; Ethics Training; Leadership Courses; Supervisory Training; Cult Investigation; Advanced Police Executive Training; Professionalism, Proper Conduct and Civil Liability; and annual updates to keep current.

Out-Service Training, sponsored by the Office of Administrative include the following: Effective Writing; The Basics of Writing Policies and Procedures; Conflict Management; Personnel Selection Interviewing; and Managing For Government Responsiveness; How to Conduct Internal Investigations; Official Misconduct and the Independent Counsel Power.

Other Out-Service Training includes the following: Internal Audit and Staff Inspection sponsored by Rollins College, Winter Park, Florida; and Comprehensive Staff Inspections Training Workshop, sponsored by The Institute of Police Technology and Management, Jacksonville, Florida.

### EDUCATION

Pennsylvania State University  
University Park, Pennsylvania

Bachelors of Science Degree  
Administration of Justice  
May, 1979

Pennsylvania Law  
Enforcement Academy  
Scotland, Pennsylvania

Act 120 Certification  
April, 1980

### ADDITIONAL DEPARTMENT RESPONSIBILITIES

In addition to my regular duties, I serve as the Department representative on the Cadet Background Investigation Screening Board; the Chairman, Background Investigation Hearing Board; and am the Cadet Dismissal Hearing Officer.

I am also one of the Emergency Preparedness Liaison Officers for the Pennsylvania Emergency Management Agency.

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE

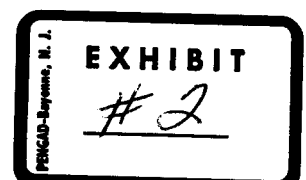
DATE: January 17, 2000

SUBJECT: Director, Legislative Affairs Office

TO: Commissioner  
(Through channels)

FROM: Captain Darrell G. Ober *DGO*  
Systems Integrator Procurement Team Leader  
Bureau of Technology Services

1. This officer kindly requests consideration for the position of Director, Legislative Affairs Office, which was recently vacated due to the retirement of Major Richard D. A. Morris.
2. I have given careful thought to the duties and responsibilities of this position. Given my variety of experience, administrative background, solid interpersonal and leadership skills, I would make an excellent choice for this position.
3. By way of reference, I have attached a resume. At your convenience, I am available to further discuss this most important assignment should you deem such action necessary.
4. Thank you for your consideration.



## RESUME CAPTAIN DARRELL G. OBER

Home Address  
71 Millers Gap Road  
Enola, Pennsylvania 17025  
Home Telephone: (717) 790-0708  
Work Telephone: (717) 657-4231

### DEPARTMENT EXPERIENCE

**April 1999 to Present** – Selected by the Commissioner of the Pennsylvania State Police to serve as the Team Leader for the Incident Information Management System (IIMS) Systems Integrator Procurement Process. In this capacity, my assignment was to create an organization project structure designed to secure the services of a systems integrator for the Pennsylvania State Police. This integration project is the largest technology project of its kind in the history of law enforcement.

**May 1998 to April 1999** - Assigned as the Director, Internal Affairs Division, Bureau of Professional Responsibility. The position involves managing the internal affairs function of approximately 4,100 enlisted and 1,500 civilian personnel. Direct management is provided in the form of leadership to three sections, each comprised of a Lieutenant, three or four investigators, and the administrative staff. Members of the Internal Affairs Division conduct administrative and criminal investigations, Supervisory Inquires, and Attorney Work Products.

**March 1995 to May 1998** – Promoted to Captain and assigned as the Director, Systems and Process Review Division, Bureau of Professional Responsibility. This position involves supervising the inspection activities of approximately 160 Department components. Oversight is provided in the form of leadership to three sections, each comprised of a Lieutenant and three non-commissioned officers. The Systems and Process Review Division is responsible for conducting in-depth inspections of Department personnel and installations. Inspections include evaluations of reporting procedures, policies and procedures, as well as determination of compliance levels of both Department policy and standards established by the Commission on Accreditation for Law Enforcement Agencies (CALEA). A thorough working knowledge of Department rules, regulations, cultural effects, and application of process modeling is fundamental to this position. I am a charter member of the Systems and Process Review Division. As Division Director, I am responsible for the complete rewrite of Operations Manual 7-4, Inspections; creation of the Systems and Process Review Service Evaluation Form; implementation of a training program for property management; establishing a line inspection program for the Bureau of Professional Responsibility; and creation of a Division newsletter for dissemination of internal information.

## RESUME

### CAPTAIN DARRELL G. OBER

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July 1981 – Enlisted in the Pennsylvania State Police on July 20, 1981.

### TRAINING

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## **RESUME**

### **CAPTAIN DARRELL G. OBER**

Care Courses; Operation Whiteline; Aids Awareness; Stress Management; Ethnic Intimidation and Institutional Vandalism; Carnival Fraud; Interview and Interrogation Technique Course; Kinesics Interviewing; Ethics Training; Worldwide Lessons in Leadership; Basic Supervision; Cult Investigation; Basic and Advanced Police Executive Training (POLEX); Professionalism, Proper Conduct and Civil Liability: Issues for Consideration as Professional Law Enforcement Manager; and annual updates.

Out-Service Training: Office of Administrative courses to include the following: Effective Writing; The Basics of Writing Policies and Procedures; Conflict Management; Personnel Selection Interviewing; Managing for Government Responsiveness. Other courses to include: State Nuclear-Biological-Chemical Officer Training in Planning, Preparedness and Response to Terrorist Incidents Involving Weapons of Mass Destruction (PEMA); How to Conduct Internal Investigations; Official Misconduct and the Independent Counsel Power; Internal Affairs, Managing Citizen Complaints and Employee Discipline; Character-Based Behavioral Training (Ohio State Highway Patrol). I have attended the New York State Police Internal Affairs Bureau Conference -1999; International Association of Chiefs of Police – Advanced Internal Affairs: Proactive Steps for Corruption Prevention; Portsmouth, New Hampshire.

Other Out-Service Training includes the following: Internal Audit and Staff Inspection sponsored by Rollins College, Winter Park, Florida; and Comprehensive Staff Inspections Training Workshop, sponsored by The Institute of Police Technology and Management, Jacksonville, Florida.

### **EDUCATION**

Pennsylvania State University  
University Park, Pennsylvania  
(Cum laude)

Bachelors of Science Degree  
Administration of Justice  
May 1979

Pennsylvania Law  
Enforcement Academy  
Scotland, Pennsylvania  
(Class rank: 1)

Act 120 Certification  
April 1980

### **ADDITIONAL DEPARTMENT RESPONSIBILITIES**

In addition to my regular duties, I have served as the Department representative on the Cadet Background Investigation Screening Board; the Chairman, Background Investigation Hearing Board; and as the Cadet Dismissal Hearing Officer.

I am also one of the Emergency Preparedness Liaison Officers for the Pennsylvania Emergency Management Agency.

**RESUME**  
**CAPTAIN DARRELL G. OBER**

I have been selected to serve on Oral Board Promotion Panels for both the Pennsylvania (for Corporals) and Virginia State Police (for Lieutenants).

**RECEIVED**

BY \_\_\_\_\_

MAY - 3 2001

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

OFFICE OF GENERAL COUNSEL

REFERRED \_\_\_\_\_

**DARRELL G. OBER****Plaintiff****vs.**

**PAUL EVANKO, MARK  
CAMPBELL, THOMAS COURY,  
JOSEPH WESTCOTT,  
HAWTHORNE CONLEY  
JOANNA REYNOLDS and  
SYNDI GUIDO**

**Defendants****CIVIL ACTION LAW****1:CV-01-0084****(JUDGE CALDWELL)****JURY TRIAL DEMANDED****AMENDED COMPLAINT****INTRODUCTORY STATEMENT**

This is an amended civil rights complaint brought by the plaintiff, a Pennsylvania State Police Captain, against the Commissioner of the Pennsylvania State Police in his individual capacity, for the deprivation of the plaintiff's federally guaranteed rights under the Due Process Clause, and the Privileges and Immunities Clause, of the 14<sup>th</sup> Amendment, his 1<sup>st</sup> and 4<sup>th</sup> Amendment rights and his interest in property. The gravamen of Captain Ober's complaint is that Commissioner Evanko unlawfully

**FILED**

MAY 10 2001

MAY 10 2001

MARY E. DUNN, CLERK

Per 2/15  
Deputy Clerk**EXHIBIT****# 3**

promulgated a pattern of career damaging personnel actions against Captain Ober because Captain Ober properly obeyed lawful directives during a probe into alleged illegal activities by Governor's Office personnel and PSP "higher ups," that could have included Colonel Evanko himself. Commissioner Evanko retaliated against Captain Ober for what Evanko considered treasonous behavior towards himself personally even though Ober had no lawful alternative but to follow FBI requests and could not inform Colonel Evanko of the federal probe without committing a crime. In a vindictive display of intentional abuse, after he learned of the investigation, Paul Evanko set out on a course of conduct that severely damaged Captain Ober's career and caused irreparable injury to his person. Mr. Evanko successfully secured the permission and concurrence of the defendant Campbell to violate Captain Ober's rights and then, despite knowing they were wrong, he enlisted the support of the other defendants to systematically injure and destroy the career and person of Captain Darrell G. Ober.

This Amended Complaint adds paragraphs 52 to 60. It modifies the caption to add Joanna Reynolds and Syndi L. Guido as defendants (paragraph 9a) and it also modifies the ad damnum clause accordingly.

### **JURISDICTION AND VENUE**

2.) Jurisdiction is conferred on this Court by 28 U.S.C. §1331 and 28 U.S.C. §1343(a)(3) and (4) and the remedial statute 42 U.S.C. §1983.

3.) This court's supplemental jurisdiction is invoked as per 28 U.S.C. §1367.

4.) A jury trial is demanded.

5.) Punitive damages are requested.

6.) Venue is properly in the Middle District of Pennsylvania since the parties, witnesses, material facts, and other evidence are all common to Dauphin County Pennsylvania.

### **PARTIES**

7.) Darrell Ober is a Captain in the Pennsylvania State Police currently assigned to the Bureau of Liquor Control Enforcement (LCE) as the Director, Administration Division.

8.) The defendant, Colonel Paul Evanko, is the Commissioner of the Pennsylvania State Police. Coury, Westcott, and Conley all assisted Commissioner Evanko in running the Department.

9.) The defendant Mark Campbell was, at all times complained of herein, Governor Tom Ridge's Assistant Chief of Staff.

9a.) The defendant Joanna Reynolds is an attorney with the Pennsylvania State Police. She and the defendant Syndi L. Guido represent the defendants.

**RIGHTS VIOLATED**

10.) The defendants Paul Evanko and Mark Campbell violated the plaintiffs' rights to substantive due process of law, a 14<sup>th</sup> Amendment right, and deprived plaintiff of his federally protected interest in property. At various times, as hereinafter described Coury, Westcott, and Conley knowingly assisted Evanko in carrying out the plan to injure Ober. Reynolds also violated Obers due process rights.

11.) The defendants violated the plaintiff's right to enjoy the protections afforded by the Privileges and Immunities Clause of the 14<sup>th</sup> Amendment.

12.) The defendants Evanko and Campbell violated the plaintiff's 1<sup>st</sup> Amendment rights and discriminated against him in his right to enjoy the equal protection of the laws.

13.) The defendants Paul Evanko and Mark Campbell violated the plaintiff Darrell Ober's right to be free of civil conspiracies both as a matter of federal law pursuant to 42 U.S.C. §1983 and as a matter of Pennsylvania tort law.

14.) The defendants unlawfully violated plaintiff's 4<sup>th</sup> Amendment rights, subjecting him unlawfully to custodial investigations and invasions of privacy in a series of investigations and administrative actions as part of an intentional effort to destroy plaintiff's career and use him as a teaching example to other members of the PSP, that they must adhere to an employment policy of blind loyalty to Evanko above

any other dictate of law, duty, or morality, or face debilitating professional or personal injury.

15.) The defendants violated Captain Ober's rights to be free of debilitating and injurious policies and practices intentionally designed to inflict emotional distress on Captain Ober.

15a.) The defendants Evanko, Reynolds and others retaliated against plaintiff for filing his original complaint and secretly changed a regulation then made false representations to this Court hoping to have the complaint dismissed.

### DAMAGES

16.) The plaintiff seeks compensatory and punitive damages for pain and suffering for humiliation, embarrassment, retaliation, injurious adverse employment actions, and emotional trauma, pursuant to 42 U.S.C. §1983 and according to Pennsylvania tort law.

17.) The plaintiff seeks damages for lost earnings and lost promotional, and career opportunities, and also for injuries to reputation and privacy.

18.) The plaintiff seeks compensatory damages for the deprivation of his federally guaranteed rights, and if and when appropriate, intends to move for punitive damages against the individual defendants.

19.) The defendants unlawfully damaged plaintiff's reputation and cruelly placed him in a false light to his colleagues and the public in violation of Pennsylvania law.

### **OPERATIVE FACTS**

20.) Darrell G. Ober, on or about September 1998, was one of the brightest and the best, a rising star in the Pennsylvania State Police (PSP) organization. A Cum laude graduate of the Pennsylvania State University, Darrell graduated with a class rank of number 1 from the Pennsylvania Law Enforcement Academy. His work history was replete with numerous career enhancing achievements, citations, and experience qualifications. His career potential was without any foreseeable limit.

21.) On May 2, 1998, Captain Ober was named as Director, Internal Affairs Division, and later, in early September 1998, Darrell Ober was named as the Acting Bureau Director of the PSP's Bureau of Professional Responsibility.

22.) This career path is customarily associated in the State Police with advancement to the very highest ranks in the organization including Commissioner. Colonel Evanko's career included service in the Bureau of Professional Responsibility, as did Colonel Coury's and Colonel Conley's careers.

23.) On or about late September or early October 1998, the plaintiff was contacted by the FBI about a political corruption case.

24.) The FBI indicated that a reliable confidential Informant (CI ) had reported that members of the "Governor's Office" and "high-ranking members of the PSP" might be involved in accepting payoffs in return for special consideration for certain applicants on the PSP cadet eligibility list.

25.) The FBI expressly and clearly requested that Darrell not divulge this information to potential investigation targets including top-ranking PSP officials. There is no PSP policy or regulation to guide a member on how to conduct or report on an investigation into alleged criminal or other misconduct by a high-ranking PSP official such as Commissioner or Deputy Commissioner.

26.) Since Ober was chosen by the FBI as a contact, obviously because he was not a target, or potential target, of the investigation, he felt, consistent with FBI directives, that it was equally important to limit any superior to whom he might report, to someone he was personally certain would not be involved in an unlawful matter, and to whom no conflict would present itself, but at the same time, be someone who was, hopefully a superior in his chain of command. It never occurred to Captain Ober that he should not, or would not, comply with the letter and spirit of PSP practices and policies and that is precisely what he did.

27.) Consequently, Captain Ober (he was promoted to Captain in the Spring of 1995) reported the corruption matter, as related by the FBI, to Lieutenant Colonel

Robert C. Hickes, newly appointed Deputy Commissioner of Staff. Captain Ober was confident that Colonel Hickes was of impeccable character, and knew, because of his position, that Hickes could not be involved. Though not in his direct chain of command, informing Lt. Col. Hickes, meant plaintiff complied with PSP Regulations. He could not inform Evanko or one of his assistants because of the clear and unambiguous FBI directive. Upon learning of the FBI probe from Ober, Hickes ordered Ober to maintain confidentially, and to keep Hickes informed. These were lawful orders.

28.) On or about May 1999 the plaintiff learned from the FBI that the FBI had reached the conclusion that the wrong doing seemed limited to one PSP Trooper and that it had not reached higher. Subsequently, it was learned that the investigation may have been compromised even before plaintiff was informed by Agent Kush. Plaintiff made the latter deduction because Campbell, to whom Evanko went for permission to unlawfully investigate plaintiff, was in the Governor's office. FBI body wires from an informant mentioned sources in the Governor's office, high PSP officials and even a State Senator and a State Representative, earlier in the investigation. Ober even learned that another PSP member had been informed before Ober was, in an earlier attempt at investigation. Only the FBI to whom Evanko personally went, knows the answers to these questions.

29.) Thus upon information and belief, the plaintiff believes that a real possibility still exists that the corruption investigation referred to above was truncated or otherwise limited because of PSP leadership interests and/or the concerns of others, regardless plaintiff was unlawfully investigated by defendants to ascertain what he knew, and to punish him for putting the law above the PSP leadership's interests.

30.) Subsequently, on May 12, 1999, the plaintiff and Lieutenant Colonel Hickes informed Commissioner Evanko about the FBI investigation.

31.) Upon being told of the investigation by plaintiff and LTC Hickes, the defendant Evanko exploded in a fit of rage. He told Hickes and the plaintiff Darrell Ober that "I will have Louie Freed (Director of the FBI) on the phone tonight and have the agents involved transferred by tomorrow."

32.) Upon information and belief plaintiff alleges that FBI Special Agent Ralph Kush was quickly transferred from the underlying corruption case, in a display of what plaintiff believes was an inappropriate influence on the FBI by Colonel Evanko.

33.) Subsequent to learning about the FBI investigation, Col. Evanko sought the personal and official approval of the defendant Mark Campbell to begin an investigation into Captain Ober. Campbell was an Assistant to the Pennsylvania Governor's Chief of Staff.

34.) At the time Campbell and Evanko conferred on investigating Ober, they both knew that Ober had committed no wrong, had broken no law, and had violated no regulation, practice, or custom of the Pennsylvania State Police.

35.) Nonetheless, in order to punish Ober because he had followed proper PSP procedure, obeyed the law, and conducted himself in a spirit supportive of proper law enforcement duties and practices, consistent with his oath, as opposed to demonstrating blind devotion, obedience and subservience to the personal and political interests and concerns of the defendants, both Evanko and Campbell decided to use Ober as an example to PSP officers and members to show that obedience to the political sensitivities of their PSP leader and his political mentors, is a necessity regardless of what the law may require, even if that leader himself is a target, or potential target, of an official law enforcement agency investigation himself.

36.) Campbell and Evanko then decided to launch the first investigation into the affairs of Captain Ober, which was only the beginning of a series of unlawful antipersonnel actions undertaken, by the defendants, to destroy Captain Ober's career and to inflict personal pain.

### INVESTIGATIONS

37.) Investigations such as those done on Captain Ober have the effect of destroying an officer's standing and reputation among his colleagues. He becomes

shunned and is subjected to insults and is ostracized. When this policy is fostered by the leader of the PSP, the impact, like here, is dramatic. Plaintiff was subjected to an unlawful and improper investigation into his activities at the direction of Evanko and Campbell. These investigations were conducted for two unlawful reasons. The first was to learn the breadth and depth of Ober's knowledge about the FBI investigation and whether Evanko and someone in the Governors office was a target, or actually under suspicion, and the second was to harass and injure Ober as a way to send a signal to others that the defendants as a leadership cadre, require the obedience, even the unlawful obedience of PSP members, above all other considerations, as an unwritten term and condition of employment. Such a policy is a shocking perversion of the public trust and of plaintiff's rights.

38.) Shortly after Evanko had been informed by plaintiff about the FBI probe, and after he had threatened action against the FBI agents involved, he had a meeting in his office with a number of his top staff members to discuss the "investigation" he planned into Captain Ober.

39.) It is averred that this meeting followed Colonel Evanko's meeting with the defendant Mark Campbell where Evanko secured permission to investigate the plaintiff, because Evanko proceeded to harass plaintiff, have others, such as the defendants, Conley, Coury and Westcott, harass him, and have him officially

investigated despite the fact that Evanko was told he should not conduct an investigation into plaintiff because it was not proper, there being no cause for such an inquiry, as required by PSP policies and rules and by both the Pennsylvania and the United States Constitution.

40.) In that meeting were a number of Commissioner Evanko's top confidants, among which were the defendants Conley, Coury and Westcott.

41.) Each of the foregoing individuals personally participated in various violations of the plaintiff's federally guaranteed rights as a way to demonstrate their loyalty to Commissioner Evanko and to show their agreement with his policy that loyalty to the leader is above all, even if it means the law will be violated and the integrity of an investigation into matters of public corruption should be compromised if the leader's interest is at issue. Beyond being against the stated goals and purposes of the Pennsylvania State Police, this policy is anti American and violates due process clauses of the 5<sup>th</sup> and 14<sup>th</sup> Amendments in their spirit and letter.

42.) Acting upon the orders of their superiors, two PSP majors conducted a custodial interview of the plaintiff that was no more than an inquiry into his personal loyalty to Evanko. The format of the interrogation was permeated with an ill disguised plan to learn what was discovered about the role, if any, of PSP upper

echelon leaders and Governor's Office personnel, in the alleged money for hiring scam the FBI was investigating.

43.) Later the defendant, Coury, blocked certain of plaintiff's promotional opportunities and also launched another totally improper investigation into plaintiff's personal affairs, for a PSP pet project of Col. Evanko's that clearly exceeds the proper role and function of the PSP as a government agency.

44.) On at least two occasions Lieutenant Colonel Westcott also personally violated plaintiff's rights in carrying out the vindictive, unlawful desires of Col. Evanko to injure plaintiff by changing his recommendation for a PEMA (Pennsylvania Emergency Management Agency) appointment causing Plaintiff's removal. Lieutenant Colonel Wescott changed plaintiff's selection for appointment to PEMA as an act of unlawful blatant abuse of plaintiff's rights to please Evanko.

45.) Colonel Conley also performed acts of vengeance for the defendant Evanko, such as stripping plaintiff of his cell phone for no reason, and denying him reimbursements for expenses allowed others.

46.) The defendant Evanko, by and through the aforementioned group of conspirators, who acted at his behest, unlawfully, and for no just or proper purpose, violated the plaintiff's rights and interests in his property and his right to be free of irrational and purposeless government actions devoid of rational or reasonable

government purposes that rose to shocking levels. The defendants committed at least the following adverse employment actions against the plaintiff solely because Plaintiff obeyed the law, performed his public duty in a proper fashion, and put his right and duty to perform his job in a lawful manner, over blind obedience and misplaced loyalty to his PSP leaders.

a.) Plaintiff was summarily transferred to Washington, Pennsylvania from Harrisburg, Pennsylvania in a hateful attempt to separate him from his children. Only the intervention of the Pennsylvania Courts saved plaintiff from an unlawful transfer and,

b.) plaintiff was made to suffer demeaning career injuring transfers and constructive demotions that have destroyed his reputation and effectiveness among colleagues, and totally destroyed his opportunities to advance in his chosen profession and,

c.) has been denied opportunities for overtime and to be reimbursed like those of equal rank and experience in the PSP and,

d.) has been unduly and unreasonably discriminated against in his attempts to obtain educational opportunities within the PSP and,

e.) was subjected to career destroying investigations without just cause.

f.) was subjected to an irrational, baseless, series of vituperative personal attacks on his character, and a series of attacks on his job performance, meant to destroy his reputation, career, self confidence, and motivation to perform his duties and,

g.) was denied a number of opportunities to improve his career through promotion and, or, transfer and,

h.) was refused considerations for promotional opportunities or requests for career enhancing transfers of assignments and,

i.) was discriminated against by defendants who created a pervasive atmosphere among PSP staff fostering retaliation, resentment, and officially sanctioned harassment of Darrell Ober through petty humiliations, acts and threats of personnel actions, and outright ostracism designed to destroy Obers' good will and effectiveness among the PSP workforce, and

j.) as a matter of PSP policy, the defendants effectuated numerous actions meant to intentionally injure plaintiff primarily through himself, Westcott, Coury, and some other of plaintiffs' superiors which have essentially decimated Captain Ober's career, his professional credentials, his opportunities and availability for promotion, and which have hampered the performance of his law enforcement duties to the detriment of the PSP and the public.

47.) The plaintiff has suffered innumerable insults, humiliations and embarrassments at the hands of PSP officers who were made to fear that they would suffer official retribution from their leaders if they treated plaintiff in an even handed, fair, way.

48.) Conclusive evidence of Evanko's unlawful misconduct is evidenced by a series of transfers, constructive demotions, and injurious personnel actions engendered by Evanko's abuse of lawful authority.

49.) Captain Ober was unlawfully removed from a prestigious assignment to the PSP Centennial Book Committee when Lt. Col. Coury instituted the unjustified, illegal and subsequently unfounded, investigation into Ober's personal activities. He was never informed that the investigation ended with an "unfounded" result, and he was never returned to the Committee in violation of his rights.

50.) On or about April 24, 1999, Captain Ober was assigned as project manager on the largest and most technical law enforcement project in PSP history (Incident Information Management System). He was promised personally by Commissioner Evanko that he would be returned to his position as Director of Internal Affairs, Bureau of Professional Responsibility upon completion of the project. Afterwards Evanko, in an irresponsible act of outlandish and extreme retribution summarily removed Ober from the assignment and returned him to the

position of Director of Internal Affairs for 5 days before transferring Ober to Troop "B" Washington Pa away from his family. The Commissioner's unlawful action in removing Ober, created a project liability, cost taxpayers countless dollars, and caused unconscionable delay. All of this was to facilitate the personal vengeance of Paul Evanko in violation of federal and state law, and his own governor's wishes.

51.) Captain Ober, as a Captain, was transferred into a position that has traditionally and consistently called for a Lieutenant in the Pennsylvania State Police Bureau of Liquor Enforcement. This was done to humiliate, embarrass and demean plaintiff and to demonstrate to him that any chance to move forward in his career in the PSP is essentially over, merely because, he believes in the rule of law.

52.) On or about January 16, 2001 to March 16, 2001 the defendants Syndi L. Guido and Joanna Reynolds claim to have investigated the underlying fact situation and compiled a brief entitled "Defendants Motion to Dismiss all Claims" (hereinafter "MTD") which was filed and served on March 16, 2001.

53.) Syndi L. Guido claims to have rewritten the original brief submitted to her by Joanna Reynolds on March 9, 2001 and also to have conducted her "own investigation," including a review of the "Historical" file for AR1-1.02.

54.) The MTD, on page 12 purports to advise the court that PSP AR 1-1.02 authorized the defendant Evanko to investigate Ober for an unauthorized breach of

his chain of command.

55.) That representation was false. AR 1-1-02 had just been changed on February 22, 2001 and was personally approved by the defendant Evanko according to file documents.

56.) The subject change, adding the key matter (subsection C) at issue in this case, that defendants expressly represented in their brief was a legal justification for Evanko and Campbell to act, was distributed only days (March 6, 2001 at the earliest) before defendants composed and filed their brief.

57.) The "Historical File" for change # 866, for AR 1-1.02 was not in compliance with PSP custom, practice, usages and regulations appertaining to the maintenance and content of "Historical" files to be kept for regulations and directives, in that the applicable file for the change to AR1-1.02 did not even contain documentation in conformance with AR 1-2.03 (B)(5).

58.) However, the file did contain a copy of the July 1997 version of AR 1-1.02 which was in effect and applicable to Obers conduct prior to when he filed his original complaint, and thus to the issue of whether Evanko and Campbell were justified in investigating Ober. Evanko's purported authority according to his MTD (subsection "C"), was clearly not a part of AR 1-1.02 at the applicable time.

59.) Additionally FR 1-1.17 (B) is misrepresented to the Court on page 12 of the MTD as “requiring members to promptly notify their supervisor when they receive any information indicating another member “might” have violated the law,” emphasis added. The subject FR uses the words and phraseology “has violated any law, rule, regulation, or order” emphasis added. It does not use the word “might.”

60.) These matters are not of minor importance and are key material issues in the current litigation.

61.) These misrepresentations to this court were intentional and constitute an abuse of legal process.

**WHEREFORE** the plaintiff Darrell G. Ober demands judgement of the defendants for the deprivation of his federally guaranteed rights and for the violation of his rights under Pennsylvania law more particularly as follows:

a.) Plaintiff demands judgement jointly and severally of the defendants Evanko, Reynolds, Guido, Campbell, Coury, Westcott, and Conley for the deprivation of his 1<sup>st</sup> Amendment rights to be free of unlawful injurious employment actions in retaliation for his proper exercise of protected speech and to punish him for filing his original complaint.

b.) Plaintiff demands judgement jointly and severally of the defendants Evanko, Reynolds, Guido, Campbell, Coury, Westcott, and Conley for the

deprivation of his federally guaranteed rights to substantive due process and of his interest in property pursuant to the due process clause of the 14<sup>th</sup> Amendment and,

c.) Plaintiff demands judgement of the defendants Evanko, Campbell, and Coury for the deprivation of his 4<sup>th</sup> Amendment rights to be free of unlawful seizures of his person subjecting him to unlawful custodial interrogations denying him other procedural safeguards and,

d.) Plaintiff demands judgement of the defendant Evanko under the Privileges and Immunities clause of the 14<sup>th</sup> Amendment for depriving him of his rights to pursue his chosen occupation free of arbitrary and capricious government molestation.

e.) Plaintiff demands judgement of all defendants for the deprivation of his right to be free of unlawful conspiracies to deprive him of his federally guaranteed rights under the 14<sup>th</sup> Amendment pursuant to 42 U.S.C. §1983 and,

f.) Plaintiff demands judgement of all defendants jointly and severally for the deprivation of his federally guaranteed rights to be free of emotional pain and mental distress imposed pursuant to the intentional effort engaged in by all defendants to deprive him of his federally guaranteed rights under 42 U.S.C. §1983 and,

g.) Plaintiff demands judgement of all defendants, jointly and severally for the violation of his rights under Pennsylvania law to be free of civil conspiracies and

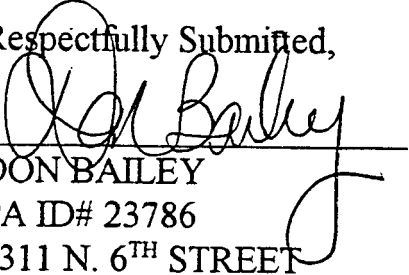
the intentional infliction of mental distress as supplemental state claims and,

h.) Plaintiff demands judgement of the defendants jointly and severally for the denial of his rights pursuant to the equal protection of the laws clause of the 14<sup>th</sup> Amendment pursuant to 42 U.S.C. §1983 and,

i.) Plaintiff demands judgement of the defendant Evanko for false light defamation as a supplemental state claim, all together with costs, fees, special damages in the amount of \$25,000.00 for legal fees incurred in defeating the unlawful efforts by the defendant Evanko to illegally assign plaintiff to Washington County Pennsylvania, punitive damages and such other relief as the court may deem appropriate.

J.) plaintiff demands judgement of the defendants Reynolds and Guido for the deprivation of his right to be free of abuse of legal process as a federally guaranteed right.

Respectfully Submitted,

  
DON BAILEY  
PA ID# 23786  
4311 N. 6<sup>TH</sup> STREET  
HARRISBURG, PA 17110  
(717) 221-9500

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**DARRELL G. OBER**

**Plaintiff**

**vs.**

**PAUL EVANKO, MARK  
CAMPBELL, THOMAS COURY,  
JOSEPH WESTCOTT,  
HAWTHORNE CONLEY and  
JOANNA REYNOLDS  
Defendants**

**CIVIL ACTION LAW**

**1:CV-01-0084**

**(JUDGE CALDWELL)**

**JURY TRIAL DEMANDED**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of May 2001, a true and correct copy of the foregoing

**Document** was served upon the following counsel of record by United States Mail, postage prepaid:

**SYNDI L. GUIDO  
DEPUTY GENERAL COUNSEL  
OFFICE OF GENERAL COUNSEL  
333 Market Street, 17<sup>th</sup> Floor  
Harrisburg, PA 17101  
Attorney for Defendants')**

BY: 

Don Bailey ID# 23786  
4311 N. 6<sup>th</sup> Street  
Harrisburg, PA 17110  
(717) 221-9500



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION  
PENNSYLVANIA LAW ENFORCEMENT ACADEMY  
~~XXXXXXXXXXXXXXXXXXXX~~  
~~XXXXXXXXXXXXXXXXXXXX~~

P. O. Box 128  
Scotland, PA 17254

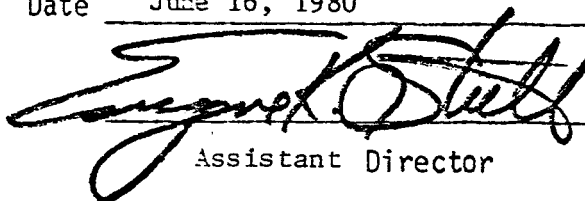
OFFICIAL TRANSCRIPT

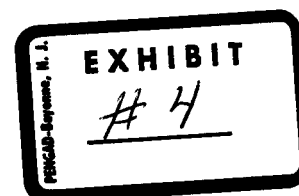
Student DARRELL G. OBER Social Security # 204-42-0484  
Home Address Main Street Date of Birth 11/16/57  
Mahaffey, PA 15757  
Dates of Attendance 1/13/80 - 4/3/80 Date of Graduation 4/3/80  
Rank in Class 2 / 20

<u>Course of Instruction</u>	<u>Hours</u>	<u>Grade</u>
I. Criminal Justice System	<u>44</u>	<u>A</u>
II. Law	<u>94</u>	<u>A</u>
III. Human Values and Problems	<u>77</u>	<u>A</u>
IV. Patrol and Investigation Procedures	<u>138</u>	<u>A</u>
V. Police Proficiency	<u>117</u>	<u>A</u>
VI. American Red Cross First Aid	<u>20</u>	<u>P</u>
VII. Physical Education	<u>50</u>	<u>P</u>

Firearms: PPC 282/300

Date June 16, 1980

  
Assistant Director



COMMONWEALTH OF PENNSYLVANIA  
STD-502 REV. 2/93

## DESK MEMORANDUM

SUBJECT

TO (NAME &amp; ADDRESS)

Deputy of Administration *h*

FROM (NAME &amp; ADDRESS)

Commissioner *BJ*

DATE SENT

September 14, 1998

DATE NEEDED

PLEASE CALL:	APPROVAL	SEE ME
RETURNED YOUR CALL	AS REQUESTED	COMMENT
INFORMATION & FILE	PREPARE REPLY / REPORT	NOTE AND RETURN
NECESSARY ACTION	SIGNATURE	

RECEIVED BY

DATE

TIME

ROUTE	INITIAL	DATE	ROUTE	INITIAL	DATE
A0	<i>h</i>	9/15			
Director, BPR					
<i>Sgt. H.</i>					

MESSAGE:

Tom:

Handle as you normally would.

ATTACHMENT 1PAGE 3 OF 4

Colonel Evanko

*\* Assign to I.A.D. Central - Anonymous Complaint.*

*LT. BROWN - See me. I would like you to handle this investigation.*



Dear Mr. Commissioner:

District Attorney Barrasse, Deputy Commissioner Westcott & Trooper Jorge have committed fraud. This conspiracy defrauded Lackawanna County and the federal government. Mark Jorge owned an airplane. He sold shares to Westcott and Barrasse. They used the airplane to provide transportation to sheriff deputies and witnesses in Lackawanna County. They billed Lackawanna County for the use of the airplane and for Jorge's time. They concealed the fact that Westcott and Barrasse were part owners in the plane. Barrasse and Westcott paid for their share of the plane by getting this extra work for Jorge and by getting payment for the flights. These plane trips were not put out for bid.

One case I can tell you about is the Harding case. The DA made arrangements to use his own plane that he owns with Jorge and Westcott to fly three sheriff deputies to pick up a witness and fly the witness in for a deposition. The witness is dead now. These three criminals billed Lackawanna County thousands of dollars for flying the witness and the sheriff deputies.

It is a common occurrence for Westcott and Barrasse to have Jorge fly them around the country for their private business and vacations. Jorge does this on State Police time. Westcott covers for him. This is fraud.

Jorge has not reported to you and did not get approval for this business he owns in secret with Westcott and Barrasse. This may not be fraud of itself but it is a violation of the regulations by Jorge and Westcott.

One of them lies and the others swear to it. I think Westcott is too close to you for you to investigate this properly. Maybe the FBI and the Scranton Times can make sure that the facts are found out by the public.

SP 101 (93)

PENNSYLVANIA STATE POLICE  
**USE OF FORCE OR COMPLAINT**  
**RECEPTION AND PROCESSING WORKSHEET**

BPR CONTROL NUMBER

1. IAD-10855

**2. COMPLAINT INFORMATION**

<b>NAME</b>	FIRST ANONYMOUS	M.I.	LAST ANONYMOUS	
<b>HOME ADDRESS</b>	STREET/P.O. BOX			
	CITY	STATE	ZIP CODE	HOME PHONE
<b>EMPLOYER</b>	NAME & ADDRESS			WORK PHONE

**3. NON-COMPLAINT USE OF FORCE REPORT**☐ SHOOTING INCIDENT☐ PHYSICAL FORCE☐ LEGAL INTERVENTION**4. SUBJECT OF ALLEGATION/REPORT (List additional subjects on back)**

<b>NAME</b>	FIRST Joseph	M.I. J	LAST Westcott	
<b>LOCATION</b>	TROOP/BUREAU	STATION/DIVISION		JOB ASSIGNMENT
				Deputy Commissioner of Operations
SSN	004-42-7420	DOE	02/27/1969	← TO BE COMPLETED IF KNOWN OR AVAILABLE

**5. DETAILS OF ALLEGATION**

ROUTE/STREET				
CITY/TWP/BORO		COUNTY Lackawanna	DATE	TIME
<b>TYPE OF ALLEGATION (CHECK ONE)</b>	<input type="checkbox"/> PHYSICAL ABUSE		<input type="checkbox"/> IMPROPER CONDUCT ON DUTY	
	<input type="checkbox"/> VERBAL ABUSE		<input type="checkbox"/> IMPROPER CONDUCT OFF DUTY	
	<input checked="" type="checkbox"/> CRIMINAL CONDUCT		<input type="checkbox"/> DISSATISFACTION WITH PERFORMANCE OF DUTY	
	<input type="checkbox"/> OTHER (Please explain)			

**SYNOPSIS**

SEE ATTACHED CORRESPONDENCE.

In the correspondence to the Commissioner, the complainant alleges that Subjects are in business together. The complainant also alleges that business is conducted on state time and it is covered up. The complainant alleges that there is not approval from the Commonwealth to conduct this business as a secondary employment.

**6. RECEPTION DATA**

DATE RECEIVED 09/14/1998	TIME RECEIVED 0900	LOCATION RECEIVED	TROOP/BUREAU Commissioner	STATION/DIVISION
<b>RECEIVED BY</b>	NAME Sergeant Ronald L. Hillegass			SSN

**7. FOR BUREAU USE**

<b>INVESTIGATOR</b>	NAME Lieutenant John R. Brown	SSN 180-52-9680
CONTROL NO. ISSUED BY Sergeant Ronald L. Hillegass	DATE ASSIGNED 09/16/1998	DATE DUE 10/26/1998
SP 1-101-A		LIMITED INVESTIGATION <input type="checkbox"/>

ATTACHMENT  
 PAGE 1 OF 4

**8 ADDITIONAL SUBJECT OF ALLEGATION/REPORT**

<b>NAME</b>	FIRST Mark	M.I. E	LAST George
<b>LOCATION</b>	TROOP/BUREAU R	STATION/DIVISION Gibson	JOB ASSIGNMENT Corporal
SSN	173-58-6879	DOE	04/11/1988
← TO BE COMPLETED IF KNOWN OR AVAILABLE			
<b>NAME</b>	FIRST	M.I.	LAST
<b>LOCATION</b>	TROOP/BUREAU	STATION/DIVISION	JOB ASSIGNMENT
SSN		DOE	
← TO BE COMPLETED IF KNOWN OR AVAILABLE			
<b>NAME</b>	FIRST	M.I.	LAST
<b>LOCATION</b>	TROOP/BUREAU	STATION/DIVISION	JOB ASSIGNMENT
SSN		DOE	
← TO BE COMPLETED IF KNOWN OR AVAILABLE			

**SYNOPSIS  
(CONT.)**

IAD-10855 (Continued).

ATTACHMENT 1  
PAGE 2 OF 4

STD-503, 9-86

COMMONWEALTH OF PENNSYLVANIA

DATE: December 4, 1998

SUBJECT: Administrative Investigation, IAD-11029

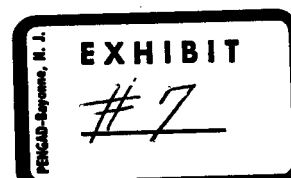
TO: Director, Bureau of Professional Responsibility

FROM: Lieutenant John R. Brown  
Commander, Central Section  
Internal Affairs Division

1. On December 4, 1998, at 1235 hours, this officer contacted Lieutenant Susan S. Lysek, Internal Affairs Division, Eastern Section, and discussed the circumstances surrounding the above subject investigation in regards to Trooper Sandra L. Coleman being carried as a subject in the incident. Lieutenant Lysek indicated there is no evidence or information available at the present time which would indicate Trooper Coleman violated any statutes or Department regulations.
2. Due to the circumstances outlined above, Lieutenant Lysek shall direct Corporal Casey M. McCormick to no longer carry Trooper Coleman as a subject in her assigned investigation, effective immediately.

cc: DIR., IAD  
BPR FILE

FILE NOTE: It is my position that an investigation should ultimately determine if an individual is/is not a subject. I caution against premature determinations



JGR

SP 1-102 (8-93).

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE  
NOTIFICATION OF INQUIRY

NOTE: INVESTIGATORS SHALL PREPARE ORIGINAL AND ONE COPY, RETAIN THE ORIGINAL WITH CASE FILE AND PROVIDE COPY TO THE SUBJECT OF INVESTIGATION. ONE OF THE THREE LISTED INVESTIGATION TYPES SHALL BE CHECKED.

BPR -

Captain

RANK

Darrell G. Ober

NAME

Bureau of Professional  
Responsibility

TROOP/STATION

## YOU ARE HEREBY NOTIFIED OF THE FOLLOWING:

- ☐ A COMPLAINT INVESTIGATION IS BEING CONDUCTED INTO AN INCIDENT IN WHICH YOU ARE ALLEGED TO HAVE BEEN INVOLVED. THE DETAILS OF THE COMPLAINT ARE AS FOLLOWS: (EXPLANATION BELOW)
- ☐ A NON-COMPLAINT INVESTIGATION IS BEING CONDUCTED IN ACCORDANCE WITH DEPARTMENT DIRECTIVES. THE DETAILS OF YOUR INVOLVEMENT ARE AS FOLLOWS: (EXPLANATION BELOW)
- ☒ AN ADMINISTRATIVE INVESTIGATION IS BEING CONDUCTED PURSUANT TO A REQUEST FROM THE ~~OFFICE OF THE~~ **OFFICE OF THE** ~~COMMISSIONER~~ **Commissioner** YOUR INVOLVEMENT HAS BEEN IDENTIFIED AS FOLLOWS:

By order of the Pennsylvania State Police Commissioner, Paul J. Evanko, I have been assigned to make inquiry into your knowledge of the facts or circumstances surrounding the political corruption investigation that was conducted by the FBI in Western Pennsylvania.

PENNSYLVANIA, N. J.

EXHIBIT

#8




SIGNATURE OF INVESTIGATOR

...CKNOWLEDGE RECEIPT OF THIS NOTIFICATION AND I AM AWARE OF MY RIGHT TO UNION REPRESENTATION.

SIGNATURE

BADGE/ID NO.

SOCIAL SECURITY NO.

DATE

TIME

SP-101 (5-91)

PENNSYLVANIA STATE POLICE

USE OF FORCE OR COMPLAINT  
RECEPTION AND PROCESSING WORKSHEET

BPR CONTROL NUMBER

BPR-8275A

2. COMPLAINANT INFORMATION					
NAME	FIRST Ralph	M.I. G.	LAST McALLISTER		
HOME ADDRESS	STREET/P.O. BOX 246 W. Main Street				
	CITY Elizabethville	STATE Penna.	ZIP CODE 17023	HOME PHONE # (717) 362-8109	
EMPLOYER	NAME & ADDRESS Pa. State Police, Comm. of Pa.			WORK PHONE # (717) 362-8700	

3. NON-COMPLAINT USE OF FORCE REPORT	<input type="checkbox"/> SHOOTING INCIDENT	<input type="checkbox"/> PHYSICAL FORCE	<input type="checkbox"/> LEGAL INTERVENTION
--------------------------------------	--	---	---

4. SUBJECT OF ALLEGATION/REPORT (List additional subjects on back)					
NAME	FIRST Darrell	M.I. G.	LAST OBER		
LOCATION	TROP/BUREAU of Professional Responsibility Review Division		STATION/DIVISION Systems and Process Assignment		
SSN	DOE		TO BE COMPLETED IF KNOWN OR AVAILABLE		

5. DETAILS OF ALLEGATION					
ROUTE/STREET S.R. 209, RD 1, Box 510, Elizabethville, Pa. 17023					
CITY/TWP/BORO Washington Twp.		COUNTY Dauphin	DATE 03-17-94	TIME 1445-1530	DAY Thursday
TYPE OF ALLEGATION (CHECK ONE)	<input type="checkbox"/> PHYSICAL ABUSE <input type="checkbox"/> VERBAL ABUSE <input checked="" type="checkbox"/> CRIMINAL CONDUCT <input checked="" type="checkbox"/> IMPROPER CONDUCT ON DUTY <input type="checkbox"/> IMPROPER CONDUCT OFF DUTY <input type="checkbox"/> DISSATISFACTION WITH PERFORMANCE OF DUTY				
	<input type="checkbox"/> OTHER (Please explain)				
SYNOPSIS On 03-17-94, a team from Systems and Process Review Division was at the Lykens Station to conduct systems and process reviews of all organizational components. Lt. OBER at approx. 1445 hrs. ordered Tpr. Thomas SANTAI to give him the keys to his desk and then started to go through Tpr. SANTAI's desk. Lt. OBER found a plastic baggie allegedly containing drug paraphernalia that wasn't marked evidence, and took same. Lt. OBER then talked to Sgt. Lynn HESS, OIC-Lykens and advised that they were either going to break into this writer and Tpr. John MURPHY's desk or tape them shut with evidence tape, and Sgt. HESS then pried open both desks and the team went through both desks. Damage was done to the drawer of the desk and lock. Also this officer's pistol was secured in a desk drawer and wasn't removed to a secure place by the team. The team also removed the plastic baggie from the Lykens Station and returned same on 03-18-94. Lt. OBER spoke to this officer on 03-18-94 and when asked who was suppose to pay for damage to the desk advised this officer to talk to Sgt. HESS.					

RECEPTION DATA					
DATE RECEIVED 03/22/94	TIME RECEIVED 1400	LOCATION RECEIVED	TROOP/BUREAU H	STATION/DIVISION HARRISBURG	
RECEIVED BY	NAME CAPT. KATHRYN E. DOWD				SSN -
BUREAU USE	INVESTIGATOR				
CONTROL NO. ISSUED BY	DATE ASSIGNED		DATE DUE		LIMITED INVESTIGATION <input type="checkbox"/>

EXHIBIT  
#9

PAGE 2 OF 2

100-37514

SP 1-101 (1-93)

PENNSYLVANIA STATE POLICE

BPR CONTROL NUMBER

# STATE OF PENNSYLVANIA OFFICE OF THE ATTORNEY GENERAL RECEPTION AND PROCESSING WORKSHEET

IAD 1999-409

2. COMPLAINT INFORMATION					
NAME	FIRST	LAST	M.I.		
	LT. COL. THOMAS	K	COURU		
HOME ADDRESS	STREET/P.O. BOX				
	DEPUTY COMM. ADMINISTRATION				
	CITY	STATE	ZIP CODE	HOME PHONE #	
				( )	
EMPLOYER	NAME & ADDRESS				WORK PHONE #
					( )

3. NON-COMPLAINT USE OF FORCE REPORT	<input type="checkbox"/> SHOOTING INCIDENT	<input type="checkbox"/> PHYSICAL FORCE	LEGAL INTERVENTION
--------------------------------------	--	---	--------------------

4. SUBJECT OF ALLEGATION/REPORT (List additional subjects on back)			
NAME	FIRST	LAST	M.I.
	DARRELL	OBER	G.
LOCATION	TROOP/BUREAU	STATION/DIVISION	JOB ASSIGNMENT
	DH Q	BUL. TECH. SERVICES	CAPTAIN
SSN	DOE	TO BE COMPLETED IF KNOWN OR AVAILABLE	
204-42-0484	7/20/81		

5. DETAILS OF ALLEGATION				
ROUTE/STREET				
CITY/TWP/BORO	COUNTY	DATE	TIME	DAY
TYPE OF ACTION (CIRCLE ONE)	<input type="checkbox"/> PHYSICAL ABUSE <input type="checkbox"/> VERBAL ABUSE <input type="checkbox"/> CRIMINAL CONDUCT <input type="checkbox"/> OTHER (Please explain)			
	<input type="checkbox"/> IMPROPER CONDUCT ON DUTY <input checked="" type="checkbox"/> IMPROPER CONDUCT OFF DUTY <input type="checkbox"/> DISSATISFACTION WITH PERFORMANCE ON DUTY			

FBI/DOJ - Bureau, N.Y.

EXHIBIT

#10

SYNOPSIS	COMP. RECEIVED CORRESPONDENCE FROM PHILIP M. CENTI AND A LETTER FROM MRS. WILLIS J. HAYMAN THE WIDOWER OF WILLIAM HAYMAN, A DECEASED RETIRED TROOPER FROM THE RODEO DETAIL. INFORMATION CONTAINED THEREIN IS THAT CAPTAIN OBER CONTACTED AND MET WITH HER AFTER HER HUSBAND'S DEATH AND OBTAINED RODEO BOOKS AND PICTURES. THERE IS ALSO MENTION THAT CAPTAIN OBER IS NOT
----------	---

6. RECEPTION DATA				
DATE RECEIVED	TIME RECEIVED	LOCATION RECEIVED	TROOP/BUREAU	STATION/DIVISION
05/27/99	1235		Q-BPR	
RECEIVED BY	NAME	SSN		
	LT. JOHN R. BREWSTER			

7. FOR BUREAU USE				
INVESTIGATOR	NAME	SSN	ENCLOSURE	
	CPL. MREGICH, IAD CENTRAL		PAGE 1 OF 1	
CONTROL NO. ISSUED BY	DATE ASSIGNED	DATE DUE	SP 1-101A	LIMITED INVESTIGATION
SGT. L.S. CHRISTIE	5/27/99	7/6/99	<input type="checkbox"/>	

8. \*

## ADDITIONAL SUBJECTS OF ALLEGATION/REPORT

NAME	FIRST	M.I.	LAST
LOCATION	TROOP/BUREAU	STATION/DIVISION	JOB ASSIGNMENT
SSN	DOE	← TO BE COMPLETED IF KNOWN OR AVAILABLE	
NAME	FIRST	M.I.	LAST
LOCATION	TROOP/BUREAU	STATION/DIVISION	JOB ASSIGNMENT
SSN	DOE	← TO BE COMPLETED IF KNOWN OR AVAILABLE	
NAME	FIRST	M.I.	LAST
LOCATION	TROOP/BUREAU	STATION/DIVISION	JOB ASSIGNMENT
SSN	DOE	← TO BE COMPLETED IF KNOWN OR AVAILABLE	
SYNOPSIS (CONT.)	A REPRESENTATIVE OF THE RP MUSEUM PROJECT.		

SEE ATTACHED CORRESPONDENCE.

N 3.

Dear Phil Conti -

I'll have to explain for I forgot about in 1995, after Bill died I received a letter & a visit from Darrell Ober & I gave him some things of rodeo books & a picture. You can check with him for I am sorry to have forgot all about it. I had a stroke in '91 & my right side of my head was not too smart at that time.

I think that the pictures in the envelope will help.

I hope you can stop some time <sup>we</sup> can meet. Remember I'm

89

Probably maybe we met in the several time we can to Retiree meetings.

It has been very nice talking with you. I have enjoyed reading the Retiree Scope you sent.

ENCLOSURE 2

PAGE 1 OF 1

Philip M. Conti  
1081 Acri Drive  
Harrisburg, Pennsylvania 17111  
717-564-8088

May 22, 1999

Dear Tom:

Your attention is invited to the attached exchange of correspondence with Marian Hayman, the widow of Willis J. Hayman, who was one of the most colorful entertainers in our rodeo history. He was an outstanding horseman, and was featured playing his violin while standing on his motorcycle and circling the field.

The other incident was one involving a Stitt, who was and may still be working with Marc Infantino on the pictorial history book. He approached a coal region family, and was given artifacts which we will never see. Unfortunately, I cannot come across my notes. My contacts with the family were by phone, not written.

In my last two columns, I have devoted space to this problem of dealing with private collectors. Since I have taken time to do that, I'm sure the message will get across. So, perhaps it might be best to set this matter aside and see what happens. Should there be a repeat of this nature, I will contact you immediately. Let's hope that does not happen.

It is indeed my pleasure to be working with you on this PSP-HEMC project. Let's hope that we will by the year 2005 have something we can truly be proud of.

Warmest regards,



ENCLOSURE 3  
PAGE 1 OF 1

Philip M. Conti  
1081 Acri Drive  
Harrisburg, Pennsylvania 17111  
717-564-8088

July 9, 1999

Dear Bill:

Today I received another shipment of artifacts from the family of James Brooks. In the accompany correspondence I was informed that Jim, who died last December at the age of 95, had been solicited by Captain Darryl Ober to whom Jim gave some uniform items. These items were not specifically described.

This is another incident in which Ober has approached our aged retirees to solicit artifacts. In each case, he takes pain to identify himself as a State Police captain, showing them his business card indicating his rank and post. To date, I have not been able to prove that he has actually misrepresented himself as an official of PSP-HEMC in seeking items for the museum. But, he is coming close to crossing the line. He is using his rank and post with the Department to give the impression at least that he is somehow connected with our museum effort. If we cannot prove him doing something criminally wrong, I believe he is doing something for which he could be disciplined by the Department.

You, Jim Hazen and I have spoken to him at one time or another about his aggressive actions in obtaining artifacts from our retired personnel and their families. Apparently he chooses to set aside these admonishments.

I understand that he now comes under the command of Lt. Colonel Hickes. I would suggest that you get in touch with Hickes, and let him know that we are not pleased with Ober's competition, especially the method he pursues.

Warmest regards,

*Phil*

ENCLOSURE 4  
PAGE 1 OF 1

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE

DATE: December 23, 1999

SUBJECT: Supervisory Inquiry IAD# 1999-409

TO: Director, Bureau of Professional Responsibility

FROM: Lt. Colonel Thomas K. Coury *TKC*  
Deputy Commissioner of Administration

- ENCLOSURES: (1) Supervisory Inquiry, IAD# 1999-409, prepared by Corporal Robert D. Mrgich, Bureau of Professional Responsibility, dated August 23, 1999, with attachments.
- (2) Notification of result of investigation directed to Director, Bureau of Technology Services, Attn: Captain Darrell G. Ober, in regards to the above inquiry.
1. After careful review of Enclosure (1), I have concluded that the allegation is unfounded. No additional inquiry or formal investigation is warranted in this case.
  2. It was alleged that Captain Ober had used his position of being a member of the Centennial Book Committee to obtain Pennsylvania State Police historical items for his personal use. However, examination of the facts and circumstances of this investigation indicate that this allegation is not true.
  3. In 1995 Captain Ober corresponded with two Department retirees or their caregivers. He later received historical items from these individuals. Written correspondence to the individuals as contained in Enclosure (1) demonstrate that at no time did Captain Ober identify himself as a member of the museum project or of the Centennial Book Committee. Additionally, Captain Ober obtained the historical items in 1995, and he did not become a member of the Centennial Book Committee until August 1996.
  4. Enclosure (2) was sent to Captain Ober advising him of my determination in this case. Unfortunately, the complainant in this case recently past away and no notification of the results of the investigation can be made.



STD-501, 9-86

COMMONWEALTH OF PENNSYLVANIA

DATE: March 23, 2000

SUBJECT: Training Opportunity -  
Alcohol Policy XII Conference - June 11-14, 2000

TO: Section Commanders

FROM: Major Francis E. Koscelnak *F. E. K.*  
Director, Bureau of Liquor Control Enforcement

REFERENCE: (a) 1998-2000 Provisions from Boards of Arbitration Awards and Collective Bargaining Agreements Between Commonwealth of Pennsylvania and the Pennsylvania State Troopers Association, effective July 1, 1998 to June 30, 2000.

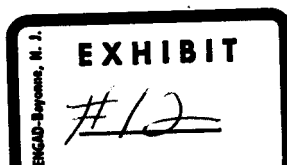
ENCLOSURE: (1) Registration Packet for National Crime Prevention Council, Alcohol Policy XII Conference Alcohol and Crime Research and Practice for Prevention.

1. In accordance with Article 37, Section 9 of Reference (a), a training opportunity is available to attend the National Crime Prevention Council, Alcohol Policy XII Conference, Alcohol and Crime Research and Practice for Prevention, to be held on June 11-14, 2000 in Washington, D.C. Enclosure (1) contains details on the contents of this conference.

2. One (1) Bureau representative will attend. Interested Section Commanders shall forward correspondence to this office, to be received no later than the close of business April 17, 2000.

3. Selection of the attendee will be in accordance with the provisions of Reference (a).

FEK/mp

cc: Capt. Campbell  
Capt. McDonald  
A. Belmont  
File  
B. DeimlerATTACHMENT 100  
PAGE        OF

STD-501, 9-86

COMMONWEALTH OF PENNSYLVANIA

TE: April 18, 2000

SUBJECT: Alcohol Policy XII Conference -  
June 11-14, 2000

TO: Central Section Commander

FROM: Major Francis E. Koscelnak *F.E.K.*  
Director, Bureau of Liquor Control Enforcement

REFERENCES: (a) Memorandum dated March 23, 2000 from Director, Bureau of Liquor  
Control Enforcement relative to Subject.  
(b) Your memorandum dated March 28, 2000.

1. In accordance with References (a) and (b), you have been approved to  
and the Subject conference. You shall also select one (1) Enforcement Officer 3 from your section  
to accompany you to the conference.

2. The name of the affected Enforcement Officer 3 shall be provided to this  
office no later than the close of business April 21, 2000 so that the appropriate arrangements can be  
made.

FEK/jla

cc: Capt. Campbell  
Capt. McDonald  
A. Belmont  
B. Deimler /  
File

# Registration Form

Forms must be postmarked no later than April 30 for early bird fees. Increased fees until May 15; after May 15, all registrations must occur onsite.

## PARTICIPANT INFORMATION

This section must be completed for proper registration. Check the box that applies.

### NAME AND ADDRESS INFORMATION

Print carefully. Your badge will be printed with the information below. To save time, attach your business card if all information is included.

OBER										DARRELL										G	
LAST NAME										FIRST NAME										INITIAL	
DARRELL OBER										CAPTAIN											
NAME TO BE PLACED ON BADGE										PROFESSIONAL TITLE											
PENNSYLVANIA										STATE										POLICE	
COMPANY/AGENCY																					
3655										VARTAN WAY											
ADDRESS																					
HARRISBURG										PA										17110	
CITY										STATE										ZIP/POSTAL CODE	
USA																					
COUNTRY										E-MAIL ADDRESS											
717-5407443										717-5417861											
DAYTIME TELEPHONE										FAX											

☐ I am a Chapereone.

☒ Disability accommodation required. List your needs.

all that apply. Meals must be reserved; this information assists in conference planning and meal preparation. I plan to attend:

- ☒ Sunday Reception
 ☒ Monday Continental Breakfast
 ☒ Monday Lunch
 ☒ Tuesday Continental Breakfast
 ☒ Tuesday Sit-Down Lunch
 ☒ Wednesday Continental Breakfast

Check for special meals: ☐ Vegetarian ☐ Other

### SPECIAL ACTIVITIES

I plan to attend: ☐ Emerging Issues Roundtables, Sunday, June 11 ☐ Simulated Compliance Check, Monday, June 12

	Early bird (postmarked by 4/30)	Regular fees (postmarked between 5/1 and 5/15)	Subtotal
Individual Registration	\$250	\$275	
Adult Group Registration (three or more)	\$225 per person	\$250 per person	
Youth (student ID required)	\$150	\$175	
Youth Group Registration (three or more; student IDs required)	\$150 per person	\$150 per person	
	Total		

### Method of Payment

- ☐ Check # \_\_\_\_\_ (payable to NCPC-AP12)
 ☐ Government PO # \_\_\_\_\_ (PO must be attached)
 ☐ Visa
 ☐ MasterCard
 ☐ American Express
 ☐ Diners Club
 ☐ Discover

CARD NUMBER

EXP. DATE

CARD HOLDER'S NAME

SIGNATURE

Mail payments to: NCPC-AP12 ■ PO Box 631824, ■ Baltimore, MD 21263-1824

National Crime Prevention Council's Federal Tax ID number is 133129302.

### Professional Affiliation

- ☐ Private sector  
☐ Community group  
☐ Criminal justice  
☐ Education  
☐ Elected official  
☐ Faith community  
☐ Law enforcement  
☐ Military  
☐ Public health  
☐ Parks/Recreation  
☐ Researcher/Evaluator  
☐ Social services  
☐ Youth/Youth service group  
☐ Volunteer  
☐ Nonprofit  
☐ Other (specify)

### Job Jurisdiction

- ☐ National  
☐ Federal  
☐ State/Province  
☐ County  
☐ City/town  
☐ Sovereign nation  
☐ International

Your assistance in completing the information below will help us to market our program. We sincerely appreciate your time and effort spent in answering these questions.

- ☐ Male ☐ Female  
☐ Age 19 and under  
☐ Age 20-25  
☐ Age 26-40  
☐ Age 41-56  
☐ Age 57 and up  
☐ African American  
☐ Asian/Pacific  
☐ Caucasian  
☐ Hispanic  
☐ Multi-racial  
☐ Native American

# Registration Form

Forms must be postmarked no later than April 30 for early bird fees. Increased fees until May 15; after May 15, all registrations must occur onsite.

## NAME AND ADDRESS INFORMATION

Print carefully. Your badge will be printed with the information below. To save time, attach your business card if all information is included.

MERLINA										TONN										M	
LAST NAME										FIRST NAME										INITIAL	
TONN MERLINA ENFORCEMENT SUPERVISOR																					
NAME TO BE PLACED ON BADGE										PROFESSIONAL TITLE											
PA STATE POLICE LIQUOR ENFORCEMENT																					
COMPANY/AGENCY																					
BIGGS VARTAN WAY																					
ADDRESS																					
HARRISBURG										PA		117110									
CITY										STATE		ZIP/POSTAL CODE									
COUNTRY																					
E-MAIL ADDRESS																					
717-541-7961										717-541-7861											
DAYTIME TELEPHONE										FAX											

☐ I am a Chaperone.

☒ Disability accommodation required. List your needs.

all that apply. Meals must be reserved; this information assists in conference planning and meal preparation. I plan to attend:

- ☒ Sunday Reception   
 ☒ Monday Continental Breakfast   
 ☒ Monday Lunch  
☒ Tuesday Continental Breakfast   
 ☒ Tuesday Sit-Down Lunch   
 ☒ Wednesday Continental Breakfast

Check for special meals: ☐ Vegetarian ☐ Other \_\_\_\_\_

## SPECIAL ACTIVITIES

I plan to attend: ☐ Emerging Issues Roundtables, Sunday, June 11 ☐ Simulated Compliance Check, Monday, June 12

	Early bird (postmarked by 4/30)	Regular fees (postmarked between 5/1 and 5/15)	Subtotal
Individual Registration	\$250	\$275	
Adult Group Registration (three or more)	\$225 per person	\$250 per person	
Youth (student ID required)	\$150	\$175	
Youth Group Registration (three or more; student IDs required)	\$150 per person	\$150 per person	
		<b>Total</b>	

## Method of Payment

- ☐ Check # \_\_\_\_\_ (payable to NCPC-AP12)   
 ☐ Government PO # \_\_\_\_\_ (PO must be attached)  
☐ Visa   
 ☐ MasterCard   
 ☐ American Express   
 ☐ Diners Club   
 ☐ Discover

CARD NUMBER

EXP. DATE

CARD HOLDER'S NAME

SIGNATURE

Mail payments to: NCPC-AP12 ■ PO Box 631824, ■ Baltimore, MD 21263-1824

National Crime Prevention Council's Federal Tax ID number is 13-2712020

## PARTICIPANT INFORMATION

This section must be completed for proper registration. Check the box that applies.

### Professional Affiliation

- ☐ Private sector  
☐ Community group  
☐ Criminal justice  
☐ Education  
☐ Elected official  
☐ Faith community  
☒ Law enforcement  
☐ Military  
☐ Public health  
☐ Parks/Recreation  
☐ Researcher/Evaluator  
☐ Social services  
☐ Youth/Youth service group  
☐ Volunteer  
☐ Nonprofit  
☐ Other (specify) \_\_\_\_\_

### Job Jurisdiction

- ☐ National  
☐ Federal  
☒ State/Province  
☐ County  
☐ City/town  
☐ Sovereign nation  
☐ International

Your assistance in completing the information below will help us to market our program. We sincerely appreciate your time and effort spent in answering these questions.

☒ Male ☐ Female

- ☐ Age 19 and under  
☐ Age 20-25  
☒ Age 26-40  
☒ Age 41-56  
☐ Age 57 and up  
☐ African American  
☐ Asian/Pacific  
☐ Caucasian  
☐ Hispanic  
☐ Multi-racial  
☐ Native American

# Registration Form

Forms must be postmarked no later than April 30 for early bird fees. Increased fees until May 15; after May 15, all registrations must occur onsite.

## AND ADDRESS INFORMATION

Print carefully. Your badge will be printed with the information below. To save time, attach your business card if all information is included.

SWEETING										PEARL										A		MIS	
LAST NAME										FIRST NAME										INITIAL		PREFIX	
PEARL A SWEETING										SERGEANT													
NAME TO BE PLACED ON BADGE										PROFESSIONAL TITLE													
PENNA STATE POLICE BUR OF L & C. ENTS																							
COMPANY/AGENCY																							
3655 VARTHAN WAY																							
ADDRESS																							
HARRISBURG										PA										17110			
CITY										STATE										ZIP/POSTAL CODE			
UNITED STATES SWEETING@PSP.STATE.PA.US																							
COUNTRY																							
717-5407425										717-540-7452													
DAYTIME TELEPHONE										FAX													

☐ I am a Chaperone.

☒ Disability accommodation required. List your needs. NONE

all that apply. Meals must be reserved; this information assists in conference planning and meal preparation. I plan to attend:

- ☒ Sunday Reception     
 ☒ Monday Continental Breakfast     
 ☒ Monday Lunch  
☒ Tuesday Continental Breakfast     
 ☒ Tuesday Sit-Down Lunch     
 ☒ Wednesday Continental Breakfast

Check for special meals: ☐ Vegetarian ☐ Other \_\_\_\_\_

## SPECIAL ACTIVITIES

I plan to attend: ☐ Emerging Issues Roundtables, Sunday, June 11 ☐ Simulated Compliance Check, Monday, June 12

	Early bird (postmarked by 4/30)	Regular fees (postmarked between 5/1 and 5/15)	Subtotal
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Youth Group Registration (three or more; student IDs required)	\$150 per person	\$150 per person	
		<b>Total</b>	

## Method of Payment

- ☐ Check # \_\_\_\_\_ (payable to NCPC-AP12)     
 ☐ Government PO # \_\_\_\_\_ (PO must be attached)  
☐ Visa     
 ☐ MasterCard     
 ☐ American Express     
 ☐ Diners Club     
 ☐ Discover

RD NUMBER

EXP. DATE

CARD HOLDER'S NAME

SIGNATURE

Mail payments to: NCPC-AP12 ■ PO Box 631824, ■ Baltimore, MD 21263-1824  
National Crime Prevention Council's Federal Tax ID number is 133129302.

## PARTICIPANT INFORMATION

This section must be completed for proper registration. Check the box that applies.

### Professional Affiliation

- ☐ Private sector  
☐ Community group  
☐ Criminal justice  
☐ Education  
☐ Elected official  
☐ Faith community  
☒ Law enforcement  
☐ Military  
☐ Public health  
☐ Parks/Recreation  
☐ Researcher/Evaluator  
☐ Social services  
☐ Youth/Youth service group  
☐ Volunteer  
☐ Nonprofit  
☐ Other (specify) \_\_\_\_\_

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☐ Federal  
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☐ International

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☐ Asian/Pacific  
☐ Caucasian  
☐ Hispanic  
☐ Multi-racial  
☐ Native American

# Registration Form

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## NAME AND ADDRESS INFORMATION

Print carefully. Your badge will be printed with the information below. To save time, attach your business card if all information is included.

KARBOWSKI										DENISE										A	
LAST NAME										FIRST NAME										INITIAL	
DENISE KARBOWSKI										CORPORAL											
NAME TO BE PLACED ON BADGE										PROFESSIONAL TITLE											
PENNSYLVANIA STATE POLICE																					
COMPANY/AGENCY																					
3655 VARTAN WAY																					
ADDRESS																					
HARRISBURG										PA		17118									
CITY										STATE		ZIP/POSTAL CODE									
USA										dkarbowski@psp.state.pa.us											
COUNTRY										E-MAIL ADDRESS											
717-5407428										717-5407459											
DAYTIME TELEPHONE										FAX											

☐ I am a Chaperone.

☒ Disability accommodation required. List your needs.

Check all that apply. Meals must be reserved; this information assists in conference planning and meal preparation. I plan to attend:

- ☒ Sunday Reception     
 ☒ Monday Continental Breakfast     
 ☒ Monday Lunch  
☒ Tuesday Continental Breakfast     
 ☒ Tuesday Sit-Down Lunch     
 ☒ Wednesday Continental Breakfast

Check for special meals: ☐ Vegetarian ☐ Other

## SPECIAL ACTIVITIES

I plan to attend: ☒ Emerging Issues Roundtables, Sunday, June 11 ☒ Simulated Compliance Check, Monday, June 12

	Early bird (postmarked by 4/30)	Regular fees (postmarked between 5/1 and 5/15)	Subtotal
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Youth Group Registration (three or more; student IDs required)	\$150 per person	\$150 per person	
		<b>Total</b>	

## Method of Payment

- ☐ Check # \_\_\_\_\_ (payable to NCPC-AP12)     
 ☐ Government PO # \_\_\_\_\_ (PO must be attached)  
☐ Visa     
 ☐ MasterCard     
 ☐ American Express     
 ☐ Diners Club     
 ☐ Discover

CREDIT CARD NUMBER

EXP. DATE

CARD HOLDER'S NAME

SIGNATURE

Mail payments to: NCPC-AP12 ■ PO Box 631824, ■ Baltimore, MD 21263-1824

National Crime Prevention Council's Federal Tax ID number is 133129302

## PARTICIPANT INFORMATION

This section must be completed for proper registration. Check the box that applies.

### Professional Affiliation

- ☐ Private sector  
☐ Community group  
☐ Criminal justice  
☐ Education  
☐ Elected official  
☐ Faith community  
☒ Law enforcement  
☐ Military  
☐ Public health  
☐ Parks/Recreation  
☐ Researcher/Evaluator  
☐ Social services  
☐ Youth/Youth service group  
☐ Volunteer  
☐ Nonprofit  
☐ Other (specify) \_\_\_\_\_

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- ☐ National  
☐ Federal  
☒ State/Province  
☐ County  
☐ City/town  
☐ Sovereign nation  
☐ International

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☐ Age 19 and under  
☐ Age 20-25  
☐ Age 26-40  
☒ Age 41-56  
☐ Age 57 and up  
☐ African American  
☐ Asian/Pacific  
☐ Caucasian  
☐ Hispanic  
☐ Multi-racial  
☐ Native American

STD-501, 9-8J

## COMMONWEALTH OF PENNSYLVANIA

TE: April 19, 2000

SUBJECT: Request for Approval of Out-of-State Travel  
National Alcohol Education Symposium  
June 11 - 14, 2000

TO: Deputy Commissioner of Operations

FROM: Major Francis E. Koscelnak *F.E.K.*  
Director  
Bureau of Liquor Control Enforcement

REFERENCE: (a) FR 5-1, Section 1.05, Travel and Subsistence, Request for  
Approval of Out-of-State Travel

ENCLOSURE: (1) Training Agenda from subject Conference  
(2) Approval of Out-of-State Travel Form  
(3) Out-Service Training Authorization Form  
(4) Approval of Out-of-State Travel Form  
(5) Out-Service Training Authorization Form

1. Enclosures (1) through (5), are forwarded for your information and approval.

2. The method of transportation will be state automobile and the mileage one way is 128 miles. Below is a breakdown of estimated costs:

Registration	\$ 225.00
Transportation	0.00
Lodging three nights	447.00
Meals	<u>216.00</u>
	\$ 888.00 (per person)

FEK/bld

cc: F I L E ✓

COMMONWEALTH OF PENNSYLVANIA  
STD-279 REV. 12-95ICS  
☐ 310  
☐ 320SHOW THIS NUMBER  
ON INVOICE

OT 818852

## OUT-SERVICE TRAINING AUTHORIZATION

DATE PREPARED

April 19, 2000

EMPLOYEE OR TRAINING SOURCE NAME AND ADDRESS JPCP-AP12 Conference P.O. Box 631824 Baltimore, MD 21263-1824		BILL TO - AGENCY (PROVIDE ORIGINAL AND TWO COPIES OF INVOICE)		EFFECTIVE DATE June 11, 2000	
PAYEE FED. I.D./SOC. SEC. NO.		DEPARTMENT PA State Police BUREAU/INSTITUTION Bureau of Liquor Control Enforcement ADDRESS 3655 Vartan Way Harrisburg, PA 17110		TERMINATION DATE June 14, 2000	
EMPLOYEE NAME, ADDRESS AND TELEPHONE NO. See Course Title & Description		TRAINING SOURCE NAME, ADDRESS AND TELEPHONE NO. Renaissance Washington DC Hotel 999 9th Street, NW Washington, DC 20001 (202) 898-9000		TRAINING SITE (CITY/STATE) Washington, DC	
CLASSIFICATION See Course Title and Description		CREDIT OFFERED -0-		PAYMENT NOT TO EXCEED \$225.00	
		CREDIT HOURS PAID IN PREVIOUS 12 MOS.		SEE INSTRUCTIONS ON REVERSE SIDE	
		CLASS MEETS		LEAVE	
		M T W T F S S		TYPE HOURS DAYS	
		BEGINS		0800	
		ENDS		1800	
				Work Assignment No Leave Charged	

COURSE TITLE AND DESCRIPTION (OUTLINE TRAINING OBJECTIVES AND RELEVANCE OF TRAINING TO EMPLOYEE'S PRESENT DUTIES.)

Pearl A. Sweeting, Sergeant, Executive Officer, Bureau of Liquor Control Enforcement  
 Denise A. Karbowski, Corporal, Supervisor, Special Investigations Section, Bureau of Liquor Control Enforcement

Course Title and Description - Alcohol Policy XII Conference "Alcohol and Crime Research and Practice for Prevention" - The following topics will be discussed: Alcohol and Crime Research & Practice, Environmental Approaches to Reducing Drinking-Related Violence and Other Crimes, Reducing DUI-Keeping Us on Track, Keynote Address on Alcohol and Crime, and other various related sessions.

1. Method of Transportation and Mileage one way - State Car, 128 miles

2. Estimated Costs:

- a. Transportation - \$0.00
- b. Lodging - \$447.00
- c. Meals - \$216.00
- d. Registration - \$225.00
- e. Miscellaneous - \$0.00

f. Total: \$888.00 per person \$1,776.00 (two people) Note: These expenses associated with this training are charged to the Enforcing Underage Drinking Law Program Grant-Grant Code LC. Training is too enhance our performance with the Federal Grant process.

I HEREBY CERTIFY THAT I WILL ATTEND THE FULL PROGRAM OUTLINED ABOVE				SUPERVISOR'S SIGNATURE X Capt. David H. McDermott				DATE			
EMPLOYEE'S SIGNATURE				DATE				SUMMARY OF TRAINING COSTS			
ESTIMATED COSTS FOR AGENCY INFORMATION											
LODGING AND SUBSISTENCE EXPENSE \$		TRANSPORTATION EXPENSES \$		TOTAL EST. TRAVEL EXPENSES \$		TRAINING COSTS \$		TRAINING COSTS TO BE PAID BY EMPLOYER \$			
ACCOUNT CODE										CODED	
FUND	DEPT	APP	YR	LDG	ORG	COST FUNCTION	OBJ	AMOUNT OF ENCUMBRANCE			
001	020	899	99	8	5400	00899	335	1,326.00		PRE-AUDIT	
001	020	899	99		5400	00899	335	450.00		POSTED	
AGENCY APPROVAL										COMPTROLLER APPROVAL	
DATE										DATE	

COMMONWEALTH OF PENNSYLVANIA  
STD-274 (REV. 4-96)**REQUEST FOR APPROVAL OF OUT OF STATE TRAVEL**  
(Complete when required by Management Directive 230.10.)**THIS FORM MUST BE APPROVED PRIOR TO TRAVEL.**DEPARTMENT  
PA STATE POLICE, BUREAU OF LIQUOR CONTROL  
ENFORCEMENT

DATE

APRIL 19, 2000

APPROVAL IS REQUESTED OF THE OFFICIAL EXPENSES TO BE INCURRED BY

NAME  
PEARL A. SWEETINGPOSITION TITLE  
SERGEANT - EXECUTIVE OFFICERORGANIZATIONAL UNIT / BUREAU  
LIQUOR CONTROL ENFORCEMENT

DENISE A. KARBOWSKI

CORPORAL - SUPERVISOR  
SPECIAL INVESTIGATIONS SECTION

LIQUOR CONTROL ENFORCEMENT

DESTINATION (CITY AND STATE)

FROM HARRISBURG, PA TO WASHINGTON, DC

ACTUAL DATES OF TRAVEL

FROM JUNE 11, 2000 TO JUNE 14, 2000

PURPOSE (EXPLAIN IN DETAIL)

ATTEND THE ALCOHOL POLICY XII CONFERENCE "ALCOHOL &amp; CRIME RESEARCH AND PRACTICE FOR PREVENTION"

## METHOD OF TRANSPORTATION

- ☐ PLANE (TOURIST CLASS UNLESS AN EXCEPTION IS APPROVED  
IN ACCORDANCE WITH THE TRAVEL REGULATIONS)
- ☐ CONVENTIONAL TICKET
- ☐ SUPERSAVER TICKET (STD-201 MUST BE APPROVED.)
- ☐ TRAIN
- ☐ RENTAL CAR
- ☒ STATE CAR
- ☐ PERSONAL CAR
- ☐ OTHER (SPECIFY)

## ESTIMATED COST

TRANSPORTATION	
LODGING	\$447.00
MEALS	\$216.00
CONFERENCE REGISTRATION	\$225.00
MISCELLANEOUS	
OTHER	
TOTAL	\$ 888.00 per person

APPROVED

AGENCY HEAD

APPROVAL OF THIS FORM DOES NOT AUTHORIZE SUBSIS-  
TENCE OR LODGING RATES WHICH ARE HIGHER THAN THOSE  
AUTHORIZED IN M. D. 230.10. ACTUAL EXPENSES INCURRED,  
UP TO THE ALLOWABLE MAXIMUMS, WILL BE REIMBURSED IF  
PROPERLY PRESENTED AND JUSTIFIED ON FORM STD-191.☐ APPROVAL BY THE OFFICE OF ADMINISTRATION ATTACHED.

ACCOUNT CODE						
FUND	DEPT	APP	YEAR	LDG	ORG	COST FUNCTION

COMMONWEALTH OF PENNSYLVANIA  
STD-279 REV. 12-95ICS  
☐ 310  
☐ 320SHOW THIS NUMBER  
ON INVOICE

OT 811934

DATE PREPARED

April 19, 2000

## OUT-SERVICE TRAINING AUTHORIZATION

PAYEE (EMPLOYEE OR TRAINING SOURCE NAME AND ADDRESS)

CPC-AP12 Conference  
PO Box 631824  
Baltimore, MD 21263-1824

BILL TO - AGENCY (PROVIDE ORIGINAL AND TWO COPIES OF INVOICE)

DEPARTMENT PA State Police  
BUREAU/INSTITUTION Bureau of Liquor  
Control Enforcement  
ADDRESS 3655 Vartan Way  
Harrisburg, PA 17110

EFFECTIVE DATE

June 11, 2000

TERMINATION DATE

June 14, 2000

TRAINING SITE (CITY/STATE)

Washington, DC

PAYEE FED. I. D./SOC. SEC. NO.

EMPLOYEE NAME, ADDRESS AND TELEPHONE NO.

See Course Title &amp; Description

TRAINING SOURCE NAME, ADDRESS AND TELEPHONE NO.

Renaissance Washington DC Hotel  
999 9th Street, NW  
Washington, DC 20001  
(202) 898-9000

PAYMENT NOT TO EXCEED

\$ 225.00

SEE INSTRUCTIONS  
ON REVERSE SIDE

CLASSIFICATION

See Course Title  
and Description

CREDIT OFFERED

-0-

CREDIT HOURS PAID IN  
PREVIOUS 12 MOS.

CLASS MEETS

M

T

W

T

F

S

S

LEAVE

BEGINS

0800

TYPE

HOURS

DAYS

ENDS

1800

Work Assignment  
No Leave Charged

COURSE TITLE AND DESCRIPTION (OUTLINE TRAINING OBJECTIVES AND RELEVANCE OF TRAINING TO EMPLOYEE'S PRESENT DUTIES)

Darrell G. Ober, Captain, Central Section Commander, Bureau of Liquor Control Enforcement  
Todd M. Merlina, Enforcement Officer 3, Harrisburg District Enforcement Office, Bureau of  
Liquor Control Enforcement

Course Title and Description - Alcohol Policy XII Conference "Alcohol and Crime Research and Practice for Prevention" - The following topics will be discussed: Alcohol and Crime Research &amp; Practice for Prevention, Environmental Approaches to Reducing Drinking-Related Violence and Other Crimes, Reducing DUI - Keeping Us on Track, Keynote Address on Alcohol and Crime, and other various related sessions.

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  - c. Meals - \$216.00
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  - e. Miscellaneous - \$0.00
  - f. Total: \$888.00 per person \$1,776.00 (two people)

3. Department required.

I HEREBY CERTIFY THAT I WILL ATTEND THE FULL PROGRAM OUTLINED ABOVE.

SUPERVISOR'S SIGNATURE

DATE

EMPLOYEE'S SIGNATURE

DATE

X Capt. Leonard H. M. Donald

ESTIMATED COSTS FOR AGENCY INFORMATION

SUMMARY OF TRAINING COSTS

LODGING AND SUBSISTENCE  
EXPENSE  
\$TRANSPORTATION EXPENSES  
\$TOTAL EST. TRAVEL EXPENSES  
\$TRAINING COSTS  
\$ 450.00TRAINING COSTS TO BE PAID BY EMPLOYER  
\$ 450.00

ACCOUNT CODE

CODED

FUND	DEPT	APP	YR	LDG	ORG	COST FUNCTION	OBJ	AMOUNT OF ENCUMBRANCE
084	020	171	99	1	5400		339	1,326 00
084	020	171	99	1	5400		147	450 00

PRE-AUDIT

POSTED

AGENCY APPROVAL

DATE

COMPTROLLER APPROVAL

DATE

COMMONWEALTH OF PENNSYLVANIA  
STD-274 (REV. 4-96)**REQUEST FOR APPROVAL OF OUT OF STATE TRAVEL**  
(Complete when required by Management Directive 230.10.)  
**THIS FORM MUST BE APPROVED PRIOR TO TRAVEL.**DEPARTMENT  
PA State Police, Bureau of Liquor Control  
EnforcementDATE  
April 19, 2000

APPROVAL IS REQUESTED OF THE OFFICIAL EXPENSES TO BE INCURRED BY

NAMEPOSITION TITLEORGANIZATIONAL UNIT / BUREAU

Darrell G. Ober

Captain - Central Section  
Commander

Liquor Control Enforcement

Todd M. Merlina

Enforcement Officer 3  
Harrisburg District  
Enforcement Office

Liquor Control Enforcement

DESTINATION (CITY AND STATE)

FROM Harrisburg, PA TO Washington, DC

ACTUAL DATES OF TRAVEL

FROM June 11, 2000 TO June 14, 2000

PURPOSE (EXPLAIN IN DETAIL)Attend the Alcohol Policy XII Conference "Alcohol & Crime Research and Practice  
for Prevention"METHOD OF TRANSPORTATION

- ☐ PLANE (TOURIST CLASS UNLESS AN EXCEPTION IS APPROVED  
IN ACCORDANCE WITH THE TRAVEL REGULATIONS)
- ☐ CONVENTIONAL TICKET
- ☐ SUPERSAVER TICKET (STD-201 MUST BE APPROVED.)
- ☐ TRAIN
- ☐ RENTAL CAR
- ☒ STATE CAR
- ☐ PERSONAL CAR
- ☐ OTHER (SPECIFY)

ESTIMATED COST

TRANSPORTATION	
LODGING	\$447.00
MEALS	\$216.00
CONFERENCE REGISTRATION	\$225.00
MISCELLANEOUS	
OTHER	
TOTAL	\$888.00 per person

APPROVED \_\_\_\_\_

\_\_\_\_\_  
AGENCY HEADAPPROVAL OF THIS FORM DOES NOT AUTHORIZE SUBSIS-  
TENCE OR LODGING RATES WHICH ARE HIGHER THAN THOSE  
AUTHORIZED IN M. D. 230.10. ACTUAL EXPENSES INCURRED,  
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PROPERLY PRESENTED AND JUSTIFIED ON FORM STD-191.☐ APPROVAL BY THE OFFICE OF ADMINISTRATION ATTACHED.

ACCOUNT CODE						
FUND	DEPT	APP	YEAR	LDG	ORG	COST FUNCTION

# Registration Packet

Hosted by

National Crime Prevention Council

In partnership with the

Bureau of Justice Assistance, Office of Justice Programs,  
U.S. Department of Justice

and

Center for Substance Abuse Prevention,  
Substance Abuse and Mental Health Services Administration,  
U.S. Department of Health and Human Services

Sub - 216.

Grenda

Sunday,  
Mon, Tues

14/2

June 11-12-13

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cancellation re 815873 11  
815873 104  
815873 104

ALCOHOL POLICY

# T12

ALCOHOL POLICY XII CONFERENCE

# ALCOHOL & CRIME

## Research and Practice for Prevention

JUNE 11-14, 2000  
RENAISSANCE WASHINGTON D.C. HOTEL  
WASHINGTON, DC

## ALCOHOL POLICY



Alcohol Policy XII, referred to as AP12, is the twelfth in a series of international conferences that have addressed research, policy, and prevention issues related to alcohol. The first was held in Charleston, South Carolina, in 1981. Even after all these years, the conference is not "owned" by any organization. The conference has no secretariat, no official standing, and no organizational affiliation; yet, on eleven occasions since 1981, this national conference has been held, propelled by the professional interest and commitment of alcohol policy researchers and advocates brought together by the need to learn from each other.

The Alcohol Policy conferences have become self-perpetuating because real community change is hard work and personally challenging—people come to this conference because they genuinely want to share experiences and perspectives with others who are doing similar work.

### Who Should Attend

Local law enforcement, state police, and criminal justice personnel; judges and court personnel; public health and criminal justice researchers and evaluators; youth/youth group leaders; service providers; public health and medical professionals; community-based organizations; faith community groups; and local, state, and national leaders.

### Conference Highlights

- More than 80 presentations on proven enforcement strategies, up-to-date research, innovative programs, strategic problem-solving, and environmental approaches
- Exhibit Hall with 30 resource organizations and poster presentations
- Welcome Reception
- Roundtable discussions on emerging issues in alcohol and crime

The National Crime Prevention Council thanks the following organizations for their invaluable assistance in preparing for the Alcohol Policy XII Conference.

American Medical Association  
 American Psychological Association  
 Bureau of Justice Assistance  
 Californians for Drug-Free Youth, Inc.  
 Center for Health and Social Policy  
 Center for Substance Abuse Prevention  
 Centre for Addiction and Mental Health  
 The Century Council  
 Drug Strategies  
 FACE—Truth and Clarity on Alcohol  
 Higher Education Center for Alcohol and Other Drug Prevention  
 Indian Health Service  
 Join Together  
 Latino Council on Alcohol and Tobacco  
 Louisiana Alliance to Prevent Underage Drinking  
 The Marl Institute  
 Montgomery County (MD) Police Department  
 Mothers Against Drunk Driving  
 National Council on Alcohol and Drug Dependence, Inc.  
 National Highway Traffic Administration  
 National Institute on Alcohol Abuse and Alcoholism  
 National Prevention Network  
 National Youth Network  
 New Mexico Department of Health  
 ONYX  
 Oregon Office of Alcohol and Drug Abuse Programs  
 Pacific Institute for Research and Evaluation  
 Pennsylvania State Police  
 Petersburg (VA) Commonwealth Attorney's Office  
 Research Institute on Addictions  
 Robert Wood Johnson Foundation  
 Sacramento (CA) Sheriff's Department  
 San Antonio (TX) Fighting Back of the United Way  
 State College (PA) Police Department  
 Street Law, Inc.  
 University of Minnesota, School of Public Health  
 Virginia State Police

## Contents

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## You Are Among the Leaders

It gives me great pleasure to invite you to the Alcohol Policy XII Conference, Alcohol and Crime: Research and Practice for Prevention. The National Crime Prevention Council is proud to be the official host of this dynamic conference being held June 11 to June 14, 2000, in Washington, DC. AP12 is the latest in a series of international conferences designed to examine proven policies and strategies to reduce problems associated with alcohol. It is the first in the series to focus on the links between alcohol and crime.

The conference will bring together researchers and practitioners from both public health and criminal justice backgrounds. Both Attorney General Janet Reno and Secretary of Health and Human Services Donna Shalala have cited alcohol-related problems as among the most pressing criminal justice and health concerns we face. We must continue to work together to understand the latest research and implement effective policies and strategies. AP12 is the forum in which we can come together to strengthen and improve our current efforts and envision a better future.

During the conference, we will hear from experts in the field to understand what we know, and what we need to know, about the connections between alcohol and crime. We will learn how the criminal justice and public health systems can and should work together. We will reinvigorate our commitment to freeing our communities from the negative effects of the irresponsible use of alcohol.

This work is challenging. We know that alcohol impacts many types of crime and community problems. We know that youth who drink alcohol are at greater risk of criminal behavior and being victims of other crimes. We are fortunate for the opportunity provided by the Alcohol Policy XII Conference to learn more about how to prevent these problems.

This conference will give you the best and latest information. But you will give much to this conference, for you are among the leaders in helping prevent alcohol-related crime and violence. We look forward to meeting you and working with you in June.

With every good wish,



Jack Calhoun

*President & CEO*

National Crime Prevention Council



## Conference at a Glance

*Subject to change*

### SATURDAY, June 10

2:00 p.m. – 6:00 p.m. Registration and Information Center open

### SUNDAY, June 11

8:00 a.m. – 6:00 p.m. Registration and Information Center open  
10:00 a.m. – 5:00 p.m. Exhibit/Poster Session set-up  
10:00 a.m. – 12:00 p.m. Emerging Issues: Roundtable Discussions on Alcohol and Crime  
12:00 p.m. – 1:30 p.m. Lunch on your own  
1:30 p.m. – 3:30 p.m. Emerging Issues: Roundtable Discussions on Alcohol and Crime  
4:00 p.m. – 5:30 p.m. Opening Plenary  
4:00 p.m. – 5:30 p.m. Youth Kick-Off Event  
5:30 p.m. – 7:30 p.m. Welcome Reception in the Exhibit Hall  
Poster Sessions open

### MONDAY, June 12

7:00 a.m. – 5:00 p.m. Registration open  
7:45 a.m. – 3:45 p.m. Exhibit Hall open  
8:00 a.m. – 9:00 a.m. Continental Breakfast in Exhibit Hall  
9:00 a.m. – 10:15 a.m. Plenary Session  
10:30 a.m. – 12:00 p.m. Concurrent Workshops  
12:00 p.m. – 2:00 p.m. Networking Lunch with Exhibitors  
Poster Sessions open  
2:00 p.m. – 3:00 p.m. Plenary Session  
3:15 p.m. – 4:45 p.m. Concurrent Workshops  
5:00 p.m. – 6:00 p.m. Simulated Compliance Check

### TUESDAY, June 13

7:00 a.m. – 5:00 p.m. Registration open  
7:45 a.m. – 12:00 p.m. Exhibit Hall open  
8:00 a.m. – 9:00 a.m. Continental Breakfast in Exhibit Hall  
9:00 a.m. – 10:00 a.m. Plenary Session  
10:15 a.m. – 11:45 p.m. Concurrent Workshops  
12:00 p.m. – 1:45 p.m. Luncheon Address  
2:15 p.m. – 3:45 p.m. Concurrent Workshops  
4:00 p.m. – 5:00 p.m. Plenary Session

### WEDNESDAY, June 14

8:00 a.m. – 8:30 a.m. Continental Breakfast  
8:30 a.m. – 10:00 a.m. Concurrent Workshops  
10:15 a.m. – 12:00 p.m. Plenary Session and Closing

## Featured Events

### Emerging Issues: Roundtable Discussions on Alcohol and Crime

SUNDAY, June 11, 10 a.m.–12 p.m. and 1:30 p.m.–3:30 p.m.

*Coordinators:* **Lorraine Collins**, Research Institute on Addictions; **Johnnetta Davis**, Pacific Institute for Research and Evaluation; and **Norman Giesbrecht**, Centre for Addiction and Mental Health.

Join us for informal discussions of research issues and prevention strategies related to alcohol, crime, and policy. These roundtables are open to all conference participants and will rely heavily on active discussion among participants in order to be most effective.

Please let us know in advance about specific research questions, policy, and/or practice challenges you wish to discuss; for example, effective community collaboration, using research to improve practice, or evaluating the impact of prevention programs. If you have specific questions about these roundtables or topics you would like considered, please contact **Lorraine Collins** at 716-887-2252 (fax) or e-mail [collins@ria.org](mailto:collins@ria.org).

### Simulated Compliance Check

MONDAY, June 12, 5:00 p.m.–6:00 p.m.

Many law enforcement agencies and coalitions from around the country use compliance checks as a key strategy to reduce underage access to alcohol. Research shows that compliance checks can have a major impact on merchant actions related to the sale and service of alcohol and youth attempts to purchase alcohol illegally.

Watch or join in the interactive simulation that will include how to organize and run a check, how to involve youth to benefit your project, and how to work with the media to educate the public. Hear from experienced law enforcement officers, youth, community members, researchers, and retailers on best practices for compliance checks and how to overcome obstacles you may face.

### Invest in Your Future: Invite the Youth You Work With to AP12

Alcohol Policy XII is not just for adults. The issue of alcohol affects youth and their schools and campuses. We also know that youth/adult partnerships strengthen prevention efforts.

The youth component of AP12 will draw youth from across the country. Some are involved in local or state issues. Others work with national organizations. All will learn about other successful youth initiatives, gain exposure to the national context of prevention efforts, and share their perspectives with other youth and adults.

Youth will be invited to speak out on issues and have their voices heard by policymakers. They will present a simulated compliance check open to all conference participants. Youth will benefit from attending general conference sessions, in addition to several youth-only events focused on engaging youth as alcohol policy advocates. Most importantly, they will be energized to take what they learn home to their communities and take action. In turn, adult participants at AP12 will learn about youth perspectives and the importance and benefits of including youth as full partners in their prevention efforts.

Youth registering for the conference receive a discounted rate (with a valid student ID). Youth 17 and under at the time of the conference must be accompanied by a chaperone. See page 11 for complete details.

## **General Sessions and Invited Speakers**

The general sessions are designed to be inspirational and informational and will establish the framework for the more than 80 workshop presentations.

### **Alcohol and Crime: Research and Practice for Prevention**

**Jeremy Travis**, National Institute of Justice (*invited*)

**George Kelling**, author of *Fixing Broken Windows*

**John A. Calhoun**, National Crime Prevention Council

How does alcohol use impact crime and violence? How effective is policy for preventing alcohol-related crime and violence? Learn about recent studies and reports and explore problem-solving alternatives to traditional methods of dealing with alcohol-related crime and violence.

### **Environmental Approaches To Reducing Drinking-Related Violence and Other Crimes**

**Jim Mosher**, The Marin Institute

**David Jernigan**, The Marin Institute

**Larry Greenfield**, Bureau of Justice Statistics

Irresponsible use of alcohol affects both the public health and criminal justice fields. Both fields work to the same ends—preventing alcohol-related problems and improving the community environment—yet they do not always work together. Learn how criminal justice and public health can appreciate their shared interests and overcome obstacles to effective collaboration.

### **The Share of Violence Attributable to Drinking: What Do We Know and What Research Is Needed?**

**Robin Room**, Centre for Social Research on Alcohol and Drugs

**Ingeborg Rossow**, National Institute for Alcohol and Drug Research

**Chief Charles Moose**, Montgomery County Police Department (*invited*)

We suspect that alcohol and violence are linked, but is this proven through a strong research base? What portion of violence can we hope to prevent through alcohol policy? Find out what current research shows about this relationship.

### **Reducing DUI: Keeping Us on Track**

Speaker to be announced

In the past 20 years, public awareness of drinking and driving has increased and alcohol-related traffic deaths have decreased, but recently progress seems to have slowed. Reenergize your community around comprehensive DUI prevention and learn what efforts and policies have proven most effective to prevent DUI and deal with repeat offenders.

### **Keynote Address on Alcohol and Crime: The Public Health Perspective**

Speaker to be announced

Alcohol has a huge impact on both the public health and criminal justice systems. The session will focus on partnerships and national models for effective collaboration between these fields.

### **Domestic Violence and Alcohol: What Do We Know and What Do We Need To Know To Encourage Environmental Interventions?**

Ken Leonard, Research Institute on Addictions

The relationship between alcohol and domestic violence, and our perception of this relationship, affects the way we treat batterers and victims. Learn what research shows about alcohol and domestic violence and which common prevention and intervention strategies are validated or questioned by current research.

### **Inspired Solutions: Collaboration To Prevent Underage Access to Alcohol**

Brendan Brogan, Youth Board Member, Mothers Against Drunk Driving (*invited*)

Judge Michael Martone, Troy, MI

Kathryn Stewart, Pacific Institute for Research and Evaluation

Underage drinking remains the number one killer of America's youth. Collaboration among schools, public health officials, community-based organizations, law enforcement, and the criminal justice system is essential if we are to reduce underage drinking. This session will focus on creative youth/adult partnerships, the courts, and law enforcement and community-based policy solutions.

### **Presentation of Conference Learnings**

James E. Copple, National Crime Prevention Council

Senator Robert Byrd, West Virginia (*invited*)

Key learnings derived from participants in workshop and plenary sessions will be presented. Senator Byrd, who sponsored legislation that has put \$29 million into the fight to reduce underage drinking, will discuss opportunities and directions for new policy initiatives.

### **COMMISSIONED PAPERS**

Top experts in the field of alcohol policy were invited to write and present on major topics that frame the issues that bring researchers and practitioners together for Alcohol Policy XII. Four of our general sessions will feature presentations of these papers. The commissioned papers will be published, and each conference participant will receive a pre-release copy of these important documents.

## **Exhibit Hall**

Thirty organizations will display their resources on publications, trainings, Web sites, and much more. Take advantage of this opportunity to discuss your community's special needs with representatives from resource organizations, and to meet prevention colleagues from across the country, learning about resources you can use in your work and sharing successful strategies from your community.

Join your colleagues for the Welcome Reception Sunday evening. The Hall will also be open all day Monday and Tuesday morning. Monday's box lunch will also provide networking time.

## **Poster Sessions**

Take time to learn about research and programs and discuss areas of interest with authors of poster sessions. Poster sessions visually present information of value to participants. Authors will be available both Sunday evening during the Welcome Reception and again Monday during the Networking Lunch to describe their programs and answer questions about the relevance to your community.



# Sampling of Workshop Topics and Poster Sessions

## Subject to change

*At this year's Alcohol Policy conference, participants will benefit from attending workshop presentations of interest to both researchers and practitioners from the fields of public health and criminal justice. Participants will have the unique opportunity to learn to work with different disciplines, and overcome obstacles to work toward their common goal of reducing alcohol-related crime and violence.*

### Underage Access to Alcohol

Actively Involving Youth in Prevention Efforts  
Enforcing the Underage Drinking Laws Program  
The Effects of Alcohol Advertising on Youth  
Issues of Passing and Protecting Alcohol Legislation  
The Role of Alcohol Retailers and Beverage Control Boards  
Enforcing Zero Tolerance and Minimum Drinking Age Laws  
Prevention in University Communities  
Creating and Sustaining Dynamic Coalitions

### Domestic and Interpersonal Violence

Alcohol and Domestic Violence in Rural Communities  
Interconnections Between Youth Alcohol Use and Violence  
Gender Roles in Alcohol Advertising  
The Impact of Alcohol on Sexual Victimization  
Alcohol-Related Violence in Bars and Outlets

### Quality-of-Life Issues

The Impact of Alcohol in Specific Racial and Cultural Communities  
Enforcement as a Key Prevention Strategy  
Issues of Outlet Density  
Involving Community Stakeholders in Comprehensive Efforts  
Using GPS/GIS To Map Community Problems

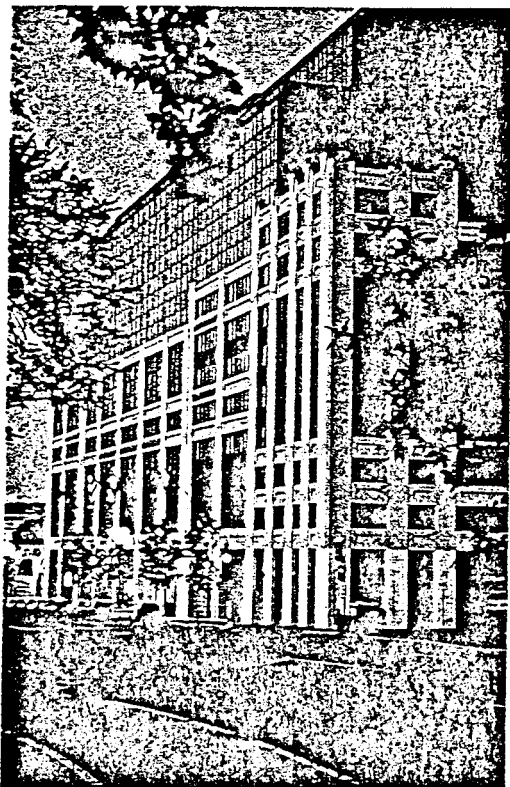
### Driving Under the Influence

Best Practices for Sobriety Checkpoints  
Promising Criminal Justice Interventions in DUI Cases  
Reducing Recidivism Rates  
Closing Drive-Up Liquor Windows  
The Effects of Neighboring Community and Cross-Border Policies

### Sample Poster Topics

Approaches To Dealing With Repeat DUI Offenders  
Media Literacy as a Prevention Tool  
Global Perspectives of the Alcohol Issue  
Unique Funding Opportunities  
Creative Partnerships for Prevention  
Underage Drinking Prevention in Specific Populations  
Current Research on the Alcohol and Violence Connection

## Conference Housing



RENAISSANCE  
WASHINGTON D.C. HOTEL  
999 9th Street, NW  
Washington, DC 20001  
800-228-9290 (reservations)  
202-898-9000 (phone) 202-789-4213 (fax)  
Single and double \$149 inclusive of taxes

Each guest room features a remote-controlled TV, voice mail, and data ports. Some rooms have coffee makers, hair dryers, irons, cotton bathrobes, and newspaper delivery. The hotel boasts two restaurants, a New York-style deli, a snack bar, and a 10,000-square-foot Swim and Fitness Center.

### Housing Instructions

#### *Please Read Carefully*

Rooms are assigned on a first-come, first-served basis. **Reservations must be made directly with the hotel by May 25 to receive the discounted conference rate and to ensure a room. Be sure to state that you are attending the Alcohol Policy XII Conference. When booking hotel rooms for youth attending the conference, be sure to tell the hotel the number of youth in your party.**

A credit card, check, or cash deposit of one night's room and tax is required to hold your room. The hotel will follow up with a confirmation letter.

The Renaissance requires cancellation notification to be received 72 hours in advance or one night's room and tax costs will be charged.

Check-in time is 3:00 p.m. Checkout time is 1:00 p.m.



# Getting There and Getting Around

## MAKING AIR RESERVATIONS

Passport Executive Travel, the official conference travel agency, is offering the lowest airfare available. American Airlines and US Airways are offering 10 percent off any full coach fare and five percent off any discounted fare.

Call Passport Executive Travel at 800-222-9800 or 800-344-7794, Monday through Friday, 8:30 a.m.-6:00 p.m. ET. Be sure to identify yourself as an Alcohol Policy XII Conference participant.

## Flying into Washington, DC

Washington, DC, is serviced by three major airports that offer a variety of ground transportation options.

	Ronald Reagan National (DCA)	Washington Dulles International (IAD)	Baltimore/Washington International (BWI)
<b>Time to Hotel</b>	15 min	40 min	45 min
<b>Means of Transport</b>			
Washington Flyer 888-927-4359	\$16	\$16	Not Available
SuperShuttle 800-258-3826	\$9	\$24	\$28
Taxi	\$12	\$50	\$40
Metro (Subway) System 202-637-7000	\$1.10-\$1.35 Yellow line to Gallery Place	NA	NA
MARC Train 800-325-7245	NA	NA	\$5 Mon-Fri to Union Station
Amtrak 800-872-7245	NA	NA	\$16-\$26 to Union Station

All rates are approximate, per person, one-way fares and do not include applicable tips or tax. All rates are subject to change without notification. Please contact the service directly for more information.

# Getting There and Getting Around (*Continued*)

*Read These Instructions Carefully*

## Metrorail System (Subway)

The Renaissance Washington D.C. Hotel is located near both the Gallery Place Metro station, which is served by the Green and Yellow lines, and the Metro Center station, which is served by the Orange, Blue, and Red lines. Maps will be available in the conference packets.

## Taxis

DC cabs charge on a zone system instead of meters; by law, basic rates must be posted in each cab. There is a \$1.25 charge for each additional passenger and a \$1 surcharge during morning and evening rush hours. Maryland and Virginia cabs have metered fares. They may transport you into the city, but not between points within the city.

## For Those Driving to Hotels

The Renaissance Washington D.C. Hotel is conveniently located between 8th and 9th Streets, NW, across from the Washington Convention Center.

## Parking

Parking at the Renaissance Hotel is \$15 per day. Other parking facilities in the area offer outside parking only, at rates from \$5 to \$10 per day; there is limited metered and street parking.

## Three Easy Ways To Register Prior to May 15

1. Mail your form and payment to: NCPC— AP12 Conference, PO Box 631824, Baltimore, MD 21263-1824
2. Fax your form and credit card number to: NCPC— AP12 Conference, 202-785-2134. If you fax your registration form with credit card information, please do not mail it to NCPC.
3. Print your registration form from the Internet: [www.ncpc.org/alcoholpolicy/](http://www.ncpc.org/alcoholpolicy/)

## Critical Dates

- APRIL 30 .....Last day for discounted early bird registration
- MAY 15 .....Last day for regular registration; after this date, you must register onsite. Last day to cancel any registration
- MAY 25 .....Last day to reserve discounted hotel rooms
- JUNE 1 .....Last day for discounted airline rates
- JUNE 10-13 .....Onsite registration
- JUNE 11-14 .....Alcohol Policy XII Conference

*See you there!*

## Onsite Registration Hours at the Renaissance Hotel

- SATURDAY, JUNE 10 .....2:00 p.m.-6:00 p.m.
- SUNDAY, JUNE 11 .....8:00 a.m.-6:00 p.m.
- MONDAY, JUNE 12 .....7:00 a.m.-5:00 p.m.
- TUESDAY, JUNE 13 .....7:00 a.m.-5:00 p.m.

## Telephone Directory

- General Registration Information .....202-261-4165
- NCPC Fax .....202-785-2134
- Renaissance Washington D.C. Hotel .....800-228-9290
- Passport Executive Travel .....800-222-9800



# Registration Information

## *Read These Instructions Carefully*

### **Pre-Register and Save**

Pre-register by completing the registration form. To qualify for the early bird rates, registration forms must be postmarked no later than April 30, 2000. Registrations postmarked after May 1, 2000, and no later than May 15, 2000, will be charged the regular rates. No registrations postmarked after May 15 will be accepted; after this date, you must register onsite.

In order to receive group rates, all individuals **MUST REGISTER AND PAY AT THE SAME TIME.**

Registration fees include all workshops, general sessions, a pre-release copy of the commissioned papers, a welcome reception, two lunches, and three continental breakfasts.

### **Youth**

Youth participants must present a valid student ID to receive the discounted youth rate. To receive the discounted youth group rate, all individuals **MUST REGISTER AND PAY AT THE SAME TIME.** Youth participants aged 17 and under must be accompanied by a chaperone that is at least 21 years of age. If you are a chaperone, please indicate so by selecting the appropriate box on the registration form.

### **Presenters**

Presenters will receive their registration information under separate cover.

### **Exhibitor Registration**

Please refer to page 12 for information on how to exhibit and receive conference registration.

### **Don't Leave Home Without It ... Bring Your Letter of Confirmation**

A confirmation letter will acknowledge all conference registrations received by May 15. Please bring this letter to the conference, as it will serve as your receipt and indicate any balance due remaining on your account. All balances must be paid prior to receipt of your registration materials onsite. If you sent a purchase order with your registration form, your account will maintain a "balance due" status until actual payment has been received from your organization.

### **Summary and Payment**

Full payment of conference registration must accompany each registration form. (U.S. federal, state, and local government employees, see below.) Forms received without full payment will be returned unprocessed. Participants are responsible for payment of fees, including those billed to third parties. The National Crime Prevention Council's Federal Tax ID number is 133129302.

If payment covers several registrations, please staple check to forms covered by payment. Early registration deadline is April 30, 2000, postmarked or faxed with payment (we will not accept faxed registrations without payment). Final registration deadline is May 15, 2000. Only registrations with credit card payment or government purchase orders attached may be sent by fax. Purchase orders are not considered payment. A balance due will remain on your account until actual payment has been received.

### **Cancellation Policy**

A refund, less a \$30 processing fee, is available until May 15. No refunds are available after May 15. In order to receive a refund, written requests must be sent to NCPC Conference Cancellations, PO Box 65179, Washington, DC 20035-5179, or faxed to 202-785-2134. Cancellations must be postmarked or faxed by May 15. Refunds will be issued after the conference. Registrations are not transferable.

### **U.S. Federal, State, and Local Government Employees**

If you are paying with a government purchase order or training authorization form, it must accompany your registration form. Registrations that do not include the proper authorization forms will be returned unprocessed. Likewise, purchase orders or authorization forms with missing or incorrect information, or not accompanied by a completed registration form, will be returned unprocessed. Purchase orders and training authorization forms are not considered payment. A "balance due" will remain on the registrant's account until actual payment is paid prior to or onsite at the conference. Participants are ultimately responsible for payment of fees.

	Early bird fee (postmarked by 4/30)	Regular fees (postmarked between 5/1 and 5/15)	Onsite fees
<b>Individual Registration</b>	\$250	\$275	\$300
<b>Adult Group Registration</b> (three or more)	\$225 per person	\$250 per person	\$300 per person
<b>Youth (student ID required)</b>	\$150	\$175	\$200
<b>Youth Group Registration</b> (three or more; student IDs required)	\$150 per person	\$150 per person	\$200 per person
<b>Daily (onsite registration only)</b>	NA	NA	\$100

# Exhibitor Registration Information and Contract

Your company is invited to join with prevention researchers and practitioners from across the globe as they develop skills, explore strategies, and build and strengthen partnerships. You are an important part of that partnership and strategy. As an exhibitor, 500 attendees will see your product, service, or organization. You can make their job easier.

## Exhibit Agenda

**Set-Up:** SUNDAY, June 11, 10 a.m.-5 p.m.

## Exhibit Hours:

### SUNDAY, June 11

5:30 p.m.- 7:30 p.m. Exhibit Hall open  
Welcome Reception

### MONDAY, June 12

7:45 a.m.- 3:45 p.m. Exhibit Hall open  
8:00 a.m.- 9:00 a.m. Continental Breakfast  
12:00 p.m.- 2:00 p.m. Networking Lunch

### TUESDAY, June 13

7:45 a.m.-12:00 p.m. Exhibit Hall open  
8:00 a.m.- 9:00 a.m. Continental Breakfast

**Tear-Down:** TUESDAY, June 13, 12:30 p.m.

## Exhibit Options

10' x 10' Tabletop .....\$250    20' x 20' Booth .....\$400

## Above Fees Include:

- One 6' skirted table
- One chair
- Professional company sign
- Listing in conference program
- Planned activities in the exhibit area
- One conference registration (additional persons will receive the group rate registration fee of \$225 per person, up to five people)

Exhibit space is limited and available on a first-come, first-serve basis. We cannot guarantee a space, but we will do our best to accommodate your request.

Guarantee exposure of your services and products! Advertise in the conference program, distributed to all conference participants.

If you are interested in placing an ad in the conference program, e-mail rmodglin@ncpc.org by March 30, 2000.

Full Page Ad	\$700	Quarter Page Ad	\$200
Half Page Ad Long	\$400	Business Card Ad	\$100
Half Page Ad Short	\$400		

## For Office Use Only

DATE RECEIVED \_\_\_\_\_  
AMOUNT RECEIVED \_\_\_\_\_  
CHECK # \_\_\_\_\_  
BOOTH # \_\_\_\_\_  
AUTHORIZED BY \_\_\_\_\_

## Please complete the following form (please print)

CONTACT PERSON (This person will receive all correspondence)

COMPANY NAME (As you would like it to appear on company sign)

STREET ADDRESS

CITY STATE ZIP

( ) ( )  
TELEPHONE FAX

E-MAIL

Item	Quantity	Price	Total Price	
10' x 10' Tabletop		\$250		
20' x 20' Booth		\$400		Names (please print)
One Conference Registration	1	Free	Free	
Additional Conference Registration		\$225		
Total				

Total payment is due with this contract.

Amount Enclosed \$ \_\_\_\_\_

## Method of Payment

Payment must be received in full by May 1, 2000.

- ☐ Check # \_\_\_\_\_ (payable to NCPC-AP12)
- ☐ Government PO # \_\_\_\_\_ (PO must be attached)
- ☐ Visa ☐ MasterCard ☐ American Express
- ☐ Diners Club ☐ Discover

CREDIT CARD NUMBER

EXP. DATE

CARD HOLDER'S NAME

SIGNATURE

Mail payments to: NCPC-AP12, PO Box 631824  
Baltimore, MD 21263-1824

National Crime Prevention Council's Federal Tax ID number is 133129302.

- ☐ My company will donate a door prize(s) of \$50 or more for a drawing

# Registration Form

Forms must be postmarked no later than April 30 for early bird fees. Increased fees until May 15; after May 15, all registrations must occur onsite.

**PARTICIPANT INFORMATION**  
This section must be completed for proper registration. Check the box that applies.

## ME AND ADDRESS INFORMATION

Print carefully. Your badge will be printed with the information below. To save time, attach your business card if all information is included.

LAST NAME										FIRST NAME										INITIAL					PREFIX				
NAME TO BE PLACED ON BADGE																				PROFESSIONAL TITLE									
COMPANY/AGENCY																													
ADDRESS																													
CITY										STATE					ZIP/POSTAL CODE														
COUNTRY										E-MAIL ADDRESS																			
DAYTIME TELEPHONE										FAX																			

☐ I am a Chaperone.

☒ Disability accommodation required. List your needs. \_\_\_\_\_

Check all that apply. Meals must be reserved; this information assists in conference planning and preparation. I plan to attend:

- ☐ Sunday Reception      ☐ Monday Continental Breakfast      ☐ Monday Lunch  
☐ Tuesday Continental Breakfast      ☐ Tuesday Sit-Down Lunch      ☐ Wednesday Continental Breakfast

Check for special meals: ☐ Vegetarian      ☐ Other \_\_\_\_\_

## SPECIAL ACTIVITIES

I plan to attend: ☐ Emerging Issues Roundtables, Sunday, June 11      ☐ Simulated Compliance Check, Monday, June 12

	Early bird (postmarked by 4/30)	Regular fees (postmarked between 5/1 and 5/15)	Subtotal
Individual Registration	\$250	\$275	
Adult Group Registration (three or more)	\$225 per person	\$250 per person	
Youth (student ID required)	\$150	\$175	
Youth Group Registration (three or more; student IDs required)	\$150 per person	\$150 per person	
<b>Total</b>			

## Method of Payment

- ☐ Check # \_\_\_\_\_ (payable to NCPC-AP12)      ☐ Government PO # \_\_\_\_\_ (PO must be attached)  
☐ Visa      ☐ MasterCard      ☐ American Express      ☐ Diners Club      ☐ Discover

CARD NUMBER

EXP. DATE

CARD HOLDER'S NAME

SIGNATURE

Mail payments to: NCPC-AP12 ■ PO Box 631824, ■ Baltimore, MD 21263-1824  
National Crime Prevention Council's Federal Tax ID number is 133129302.

## Professional Affiliation

- ☐ Private sector  
☐ Community group  
☐ Criminal justice  
☐ Education  
☐ Elected official  
☐ Faith community  
☐ Law enforcement  
☐ Military  
☐ Public health  
☐ Parks/Recreation  
☐ Researcher/Evaluator  
☐ Social services  
☐ Youth/Youth service group  
☐ Volunteer  
☐ Nonprofit  
☐ Other (specify) \_\_\_\_\_

## Job Jurisdiction

- ☐ National  
☐ Federal  
☐ State/Province  
☐ County  
☐ City/town  
☐ Sovereign nation  
☐ International

Your assistance in completing the information below will help us to market our program. We sincerely appreciate your time and effort spent in answering these questions.

- ☐ Male      ☐ Female  
☐ Age 19 and under  
☐ Age 20-25  
☐ Age 26-40  
☐ Age 41-56  
☐ Age 57 and up  
☐ African American  
☐ Asian/Pacific  
☐ Caucasian  
☐ Hispanic  
☐ Multi-racial  
☐ Native American

June 12, 2001

Don,

I have completely my factual analysis of the Defendant's MTD. I hope this is not too much detail!

Paragraph 1 - Last sentence is misleading, "According to Ober, the defendants retaliated against him for going outside his chain of command and confiding in Lieutenant Colonel Hickes, who supposedly (emphasis added) ordered Ober to keep the FBI investigation secret from his superiors."

Nothing supposed it. Defendants established this as fact nearly two years ago, through their own investigation. There is no dispute that Hickes issue the order.

FR 2.03 (Lawful Orders – Exhibit A) states that any verbal order issued by any Deputy Commissioner is valid; not conditional on chain of command. This, coupled with the fact that no Department regulation existed at the time mandating the chain of command be followed, (already acknowledged by the defendants), is critical.

If the sentence were written as it really happed, (".... Lieutenant Colonel Hickes ordered ..."), the court would be able to draw the conclusion that I, as a subordinate officer, was under lawful orders not to divulge the investigation to anyone. Once Hickes gave the order, the responsibility for that order was his.

Paragraph 2– Re: defendants March 16 MTD, "...which was authored, signed, and served by defendants' lead counsel, Syndi Guido." Reynolds name is on the cover of the MTD. Didn't she admit to writing it? Are they trying to suggest that Reynolds had nothing to do with the drafting of this response? It is a lie.

It is misleading to state, "...defense counsel mistakenly cited the wrong administrative regulation...". Then what is the correct citing? It suggests that chain of command regulation does exist; they just cited the wrong one.

Paragraph 3 – According to Exhibit B, the judge struck the April 2, 2001 brief and motion from the record. We should request the judge strike this paragraph from the defendant's motion.

Paragraph 4 – No comment.

Paragraph 5 – The first sentence refers to a "second amended complaint"; there is no second amended complaint. The second sentence directs the reader to footnote 1. Defendants are correct, I believe their actions are vile, hateful, etc., and I believe my actions were legal and proper. I am complaining they misrepresented FR 1-1.17 because they did!



Exhibit G

Footnote number 2 should be stricken from this motion. It also refers to statements made in the proposed amended complaint that were stricken from the record.

Paragraph 6 - No comment.

Paragraph 7 - Use of the word "secret". Maybe we should put this in bold print: **OBER DID NOT KEEP THE EXISTENCE OF THE FBI INVESTIGATION A SECRET. HE REPORTED IT TO LIEUTENANT COLONEL HICKES!**

Again, with the "According to Ober, Lieutenant Colonel Hickes ordered him not to tell anyone else about the investigation". The factually correct statement would be: "Upon hearing the information, LTC Hickes ORDERED Captain Ober, a subordinate officer, not to divulge this information."

Exhibit C is a copy of the Oath of Enlistment that I signed which requires me to obey the orders of a superior officer; which is precious what I did.

We should respond to footnote number 3 and elsewhere in the MTD where this appears. Conley and Hickes promotions were effective the same day (Saturday October 3<sup>rd</sup>). However, the information from the FBI came to me BEFORE the 3<sup>rd</sup> and they damn well know this from their own investigation. Yet they continue to rail on about my obligation to report to Conley; knowing that Conley did not report to BPR until at least the 6<sup>th</sup> and that I had already informed Hickes, and been given his order, on the 5<sup>th</sup>. This is all established on the tape of my IAD interview.

Paragraph 8: "Yet, he has not mentioned a single person who has treated him in that fashion because of the particular inquiry". The defendants would be five examples. If I am obligated to supply names, I can. How many would they like?

Paragraph 9: The defendants are fixated on the transfer as the only evidence of action taken by Evanko. The timeline between May 1999 and January 2000 is filled with numerous examples of actions taken against me. The transfer was the egregious action that "sparked" the intervention of the state court. Why did Evanko rescind the transfer? The logical conclusion is because he knew it was illegal, he had been caught and knew he would be exposed.

Paragraph 10: Paragraph is a blatant lie. "...Evanko explained that Captain Ober had been transferred to Washington in order to assist the Area Commander in coordinating services at the Conference of the National Governors Association...". Evanko OR ANYBODY ELSE, NEVER "EXPLAINED" this to me. Accordingly to the personnel order, the transfer was permanent with no mention of the NGA (refer to Defendants OWN Exhibit B; FR 3-2).

Defendants are trying to pull a fast one with the regulations. They are co-mingling sections 2.04 and 2.05. They are attempting to use Evanko's authority

under 2.04 (A) to assign me to Washington but call it a temporary transfer that falls under the provisions of 2.05. These are two entirely different regulations. They cannot transfer a member under 2.04 without following section B., Procedures. In my situation subsection 3. would apply. This failure was pointed out to them in Exhibit E; page 13. Their way around this is to call it a temporary transfer under the provisions of 2.05. The problem is, I was not assigned to a Troop and do not fall under these provisions. Besides, they would have followed the procedures of this section either. This is a giant "I got you" and evidence of another misrepresentation to the court.

Interestingly, defendants did not include page one of FR 3-2 that contains the most damning section; (I included at the end of Exhibit E); which states transfers may not be used in lieu of discipline.

The NGA assignment is a lie; created for after the fact to cover their tracks. Why didn't Evanko send me to "the important Washington position"? Because I filed and injunction? The NGA story is a myth and I am eager to prove it.

"In the meantime, to fulfill his promise to Ober, Colonel Evanko temporarily assigned him as the Central Section Command...." What promise? The only promise we ever discussed was being sent back to IAD after IIMS. If Evanko was fulfilling a promise, why didn't he send me to the Central Section Command to begin with? It was open in January. Doesn't this contradict his promise to send me back to IAD? That was a problem inasmuch as he already promoted Lieutenant Brown into the position? Why was that necessary?

There was nothing "temporary" about my assignment to the Central Section. It was temporary because of the unexpected and unannounced retirement of Captain Alfred Campbell. Proof of the fact lies in the Personnel Orders (Exhibits F and G and FR 3-2, Transfers). Unless noted otherwise, transfers are to be considered PERMANENT. Neither personnel order indicates the transfer was temporary; by regulation that makes them permanent.

This sentence would be more accurate if the defendants had said, "Because Ober was able to defeat Evanko's planned illegal transfer to Washington, Evanko decided to find another way to punish Ober. He decided to demote him to a Lieutenant's position which was his way of disgracing Ober to the entire Department."

Paragraph 11: "Still, Ober was not happy. Even though he retained the same rank any pay, Ober did not like the fact that his new position had been held by a Lieutenant". The position was so unimportant, it had been held by a SERGEANT for the previous seven months. Why would I be happy; this was a punitive, disciplinary action intended to disgrace and humiliate me. Of the 70 Section Commanders in the State; 69 of them were Lieutenants and one was a Captain! Assigning me to a Lieutenant's position also violates the provisions of AR 1-10.07 (C) (Exhibit H).

Paragraph 12 - If we are required to provide specifics, we can.

Paragraph 13 – See above re: specifics. The last sentence is interesting, the conclusion we are asking to be drawn is for a jury to decide. Defendants are saying it is unjustified because they were caught red-handed. They are asking me and the court to accept an "Oops, just a little mistake, sorry about that, don't be mad".

Paragraphs 14 and 15- Legal stuff, your area.

Paragraph 16 – Defendants state that our complaint contains very few factual averments, then they proceed to list four specific examples of actions taken against me that are listed in the complaint!

Paragraph 17 – Hard to respond as it contains so much doublespeak. Defendants overlooked the other investigation into my personal affairs; Westcott blocked my from PEMA on two occasions; my overtime and equal pay opportunities; training denials; and request for career enhancing assignments. Instead they make Evanko sound benevolent by "allowing" me to stay in Harrisburg and me sound ungrateful by "complaining" that I had been assigned a job previously filled by a Lieutenant. Ridiculous!

Paragraphs 18, 19, 20, 21, 22, 23, 24 & 25 – Legal stuff, all yours.

Paragraph 26 – Legal stuff all yours; I do note the statement: "...and the Commissioner's actions were in no way retaliatory". Are they kidding??

Paragraph 27 – Do they really believe that potential corruption in the hiring practices of a state police agency is NOT speech constituting on a matter of public concern??!!

Paragraph 28 – Defendants are trying to set a trap by saying that I could not have been acting in the public interest by telling Hickes after being requested by the FBI to keep the matter confidential. Therefore, I had to be acting on my personal interest. This "theory" ignores two facts. One, the FBI's request not to divulge the existence of their investigation was not a legally binding one; it was a request commonly made by law enforcement investigators not to divulge details to potential target that might hamper or Impede the investigation. I informed Hickes because I made a JUDGEMENT call that someone of appropriate rank and authority ought to be made aware and, to me, Hickes was an obvious choice. This has been explained to the defendants many, many times. The second point is in all of their rhetoric; the defendants NEVER acknowledge the precarious position I was in. They arguing that I my actions were inappropriate and violated regulations, yet, they ignore the LEGAL implications of informing potential targets of the existence of the FBI probe. It is clear they were expecting me to break the law to keep them informed (Exhibit H - Obstruction).

Defendants also fail to mention their Exhibit AR 4-25.08 (F) 3. states, "Investigators shall assist federal, state, county and municipal law enforcement agencies with investigations wherein personnel may be implicated in illegal activities or other acts of misconduct". In my situation, we could argue I was loosely defined as an "investigator".

In my situation, the provisions of FR 1-2.13, Cooperation With Other Agencies (Exhibit J) were implicated. "Members shall cooperate with other agencies..."

Paragraph 29 – The report was not "belated"; it was given to Evanko as soon as the FBI indicated the probe yielded no other members than Trooper Stanton. (Exhibit K).

There is nothing significant about me not alleging Evanko retaliated against me because I knew of independent evidence of corruption in the cadet selection program. This is an interesting statement and one that makes me think they are very nervous. They have either been listening in or realize they are vulnerable because of some of the "irregularities" I have seen.

Paragraph 30 – Defendants have not proven my reasoning is "...so clearly distorted". What is "so clearly distorted" was Evanko's reaction and the actions taken against me.

Paragraph 31 – Defendants are again fixated on the transfer as the only important discipline or punishment being taken against me. Punishment began with the witch-hunt investigation. Actions taken against me ran on a continuous cycle for the ENTIRE eight month into January. I protested the actions through the grievance process. In fact, I was transferred four hours after a Step One hearing with Conley on the second grievance.

The "significant" Washington assignment is a myth and was created after the fact. Comparing my situation to LIEUTENANT Young's is preposterous. Defendants are again misrepresenting the facts. Young was a Lieutenant and could have turned the promotion down. Because he was given a choice; it is irrelevant WHERE he is from. If we ever get the chance, we will see how sweet his deal really was!

Paragraph 32 – My fourth amendment rights are implicated when the defendants, knowing no violations were committed, used the administrative provisions to compel me to participate in an administrative interview process hoping to find some evidence of wrongdoing. This occurred twice.

Paragraphs 33, 34, and 35 – Legal stuff; all yours.

Paragraph 36 – “Ober has chosen to take a simple mistake and blow it completely out of proportion”. Matter for a jury. There is no evidence this was a simple mistake other than the defendants saying so.

Re: FR 1-1.17 – To the contrary! Defendants did NOT describe that regulation to the court. In fact, they so obviously and, “stubbornly”, misrepresented the regulation they again have no credible explanation to offer in this MTD.

Paragraphs 37, 38, 39 and 40 – Legal stuff; yours.

Paragraph 41 – Evanko may be ultimate responsibility for the conduct of every member of the force (FR 3-3.04); however, he has no authority or immunity to violate members labor contract or due process rights. He cannot use this regulation to conduct “star chamber” inquiries.

Paragraph 42 – Again, a misquote of the regulation. Additionally, this section, even being misrepresented, still does apply in either situation. When the FBI first contacted me, no specific members where implicated. By the time Trooper Stanton was implicated, I had already long been under Hickes valid order not to divulge information.

New assertions that I violated regulations!! I will first deal with them one by one.

AR 4-25.10 – I DID comply! My verbal report to a Deputy Commissioner would easily satisfy this requirement. In fact, the rest of the regulation states: “When the complaint involves personnel in the chain of command and the process described in Appendage I is inappropriate (underline added), contact may be made directly with the Internal Affairs Division” (Note: Not the Director, BPR but the Internal Affairs Division).

Appendage I of AR 4-25 D. 1. states: “If the complaint involves an individual in the chain of command, the individual may be bypassed when submitting the Worksheet through channels”.

Defendant’s allegations of my wrong doing not only fails to recognize the sensitive nature of the investigation, they fail to recognize their OWN RULES WHICH PERMIT EXCEPTIONS. The language of AR 4-25 clearly recognizes exceptions do exist. You could argue that had I taken the actions they are suggesting, in addition to breaking the law, I would be violating the very regulations they are citing!

Additional support to the exceptions policy is found in AR 4-25, Appendage I which states: “When a complaint is received concerning a member assigned to the Bureau of Professional Responsibility, the Worksheet shall be sent directly, under confidential cover, to the Deputy Commissioner of Administration.”

When I informed Hickes, the decision to grant an exception to existing regulations was his; if he wanted a Worksheet generated, he would have ordered it.

FR 1-1.28 – Preparing a written statement, etc. I went well beyond this requirement and reported to a Deputy Commissioner! Hickes orders negated any obligation or requirement to record anything. Yet, defendants NEVER discuss Hickes order. They must know they are vulnerable and there is no way around the implications and defense of an order issued by a Deputy Commissioner.

Paragraph 43 – The regulation references to the Conley's position as the Director, BPR are irrelevant. I do note that AR 4-25 C. states: The Director, Internal Affairs Division shall:

1. In the absence of the Director, Bureau of Professional Responsibility, assume all duties relative to the administration of the Internal Affairs Division.

As an aside, Conley was unknown to me. Coury told me he was recommending me for the Director, BPR and not Conley because Colonel Walp promoted Conley out of BPR because he was incompetent as a Lieutenant. Colonel Walp needed a minority Captain and promoted Conley into the Emergency Preparedness Officer's position where he had no staff and couldn't hurt anyone. Hickes will back this up.

Paragraph 44 – I vehemently dispute the statement "...it is well within Commissioner Evanko's authority to investigate that unauthorized breach in the chain of command". The defendants have not established that such a breach EVER occurred. And any personnel investigations Evanko orders must comply with the rules and regulations of the agency and my civil rights.

AR 4-25 .09 (A) (11) states: "Investigations conducted at the request of the Commissioner". However, this regulation does not supercede either the labor contract or my constitutional rights.

Defendants again misrepresented AR 4-25.04 (B) both as policy and practice. This is an exercise in word-smithing and misdirection.

I was specifically told an Administrative "Inquiry" was being conducted and an Administrative Investigation was not. Administrative Investigations are defined; Inquiry's are not. Assuming the defendants position, then why were the provisions of AR 4-25 regarding notification NEVER followed? According to AR 4-25, I should have been notified of the results of the investigation in writing or initiation of administrative action (would have been Conley's responsibility).

I was also told (PSTA Representative was present) by Majors Werts and Williams they were NOT conducting an administrative investigation and at the time of my interview, they had found NO evidence of misconduct.

The Notification of Inquiry (Exhibit L) is an altered document that was necessary to accomplish their investigative objective; it was "customized" for me.

Also, contrary to the rules and practices of the agency, no BPR Control Number was assigned to the Administrative Warning (Exhibit M) that is a clear indication this one was conducted "off the books".

The definition of "Administrative Investigation" in AR 4-25.04 B. states: "Inquires into alleged misconduct by personnel OR any inquiry into the actions of Department personnel required by directives where no misconduct is alleged." In policy and practice, the latter refers to "Non-Complainant Investigations" which are defined in AR 4-25.04 (L). Examples would be use of force, failure to qualify, prisoner escapes, attorney work products, etc. Defendants again misrepresented the application and intent of this regulation.

Paragraph 45 – Yes, it was ENTIRELY inappropriate for Evanko to consult Campbell because there was no reason to! The investigation by the FBI was completed and a Trooper was arrested.

Paragraph 46 – Again, a reference to "...the way it had been mishandled by personnel under Evanko's command". Defendants have not shown that Hickes or I mishandled ANTHING!

Paragraph 47 – There was nothing "temporary" about this transfer; see prior comments.

Defendant's misrepresentation and half-truths of their authority under FR 3-2.04 (A) must be challenged. See prior comments, the procedures required to affect a transfer under this regulation were not followed.

Paragraph 49 – "...to a position where Evanko felt I would be the most useful..." If this is true, this statement indicts Evanko as the world's worst police administrator. If he REALLY believed the needs of the Department would be better served with me being prematurely ripped from a \$100 million dollar technology project and sent 200 miles to an assignment for which the preparations were already wrapped up and then, having failed in that maneuver, transferring me to replace a Sergeant who was filling in for a Lieutenant, he should be removed as a public disgrace!

AR 4-25.11 (B) – "It is a generally accepted practice to periodically rotate members assigned to an Internal Affairs Division". THIS IS ANOTHER

**MISREPRESENTATION TO THE COURT.** This is a statement about internal affairs in general; it does not establish this a Department policy.

As a matter of fact, it is NOT the customary practice to rotate personnel through internal affairs in PSP. In general, members leave by one of three ways: they are asked to leave because of performance issues; they retire or they get promoted. I think it is safe to say IAD is one of the most stable divisions in the Department; experiencing little turnover.

This is particularly true for the Directors position. Besides, the statement is irrelevant; are they forgetting that Evanko promised to bring me back to IAD upon completion of the IIMS Project? (Exhibit N).

Paragraph 50 – More legal stuff. I note their failure to acknowledge the actions taken against me were disciplinary.

Paragraph 51, 52, 53, 54, 55 – All legal stuff and in your ballpark.

In summary, the defendants MTD does not survive even cursory analysis. It is replete with contradictions, misleading references, play on words, and selective references. Despite trying to dazzle us with exhibits and misdirection, their motion easily falls apart when you scratch below the surface. Defendants MTD is a desperate attempt to justify their actions totally devoid of any credibility.

The case is quite simple. The FBI called me. I informed Hickes. Hickes gives an order. Evanko becomes enraged and, despite knowing that I have not violated any regulations, proceeds to discipline me in a number of ways. In doing so, he violates the agency rules and regulations as violates my rights.

With this MTD; the defendants have cited three regulations that were supposedly violated. They also state the investigation was "mishandled". If all that were true, why have they NEVER initiated a single action against me in accordance with Department regulations? As they say, isn't Evanko ultimately charged with the discipline of the entire Department? I was never counseled, never received an oral or written reprimand, never issued a Supervisors Notation never one mention on a performance evaluation. If they REALLY believe I violated regulations, they are derelict in their duties in not taking action against me.

Exhibit O is a recent example of what one arbitrator had to say about disciplinary transfers. It certainly applies in my case.

Finally, much has been said about chain of command. The truth is, it is widely recognized even among the most rigid organizations, that strict adherence to the chain of command leads to gridlock and paralysis. The defendants themselves, in their most recent creation (AR 1-1.02 (c)) acknowledge there are instances

when the chain is not followed. Exhibits P, Q, R, S, T and U are but a few of the many, many instances when the chain of command is not only on a regular basis.

I am also loaning you a copy of Retired Colonel McKetta's book. It provides some great insight in the PSP. I have met with Colonel McKetta. He is 85 and in poor health. He is very empathetic to my situation. Should we weigh the benefit of having the Colonel give us an affidavit re: the practices of the agency, etc.?

Thanks,

Darrell

PENN 'ANIA STATE POLICE  
BUREAU OF TECHNOLOGY SERVICES

UNISYS 1100

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B B TO: AREA, TROOP, AND STATION COMMANDERS: EXECUTIVE AND ADMINISTRATIVE OFFICES B B SUBJECT: DETACHED STATUS  
1. EFFECTIVE MONDAY, APRIL 26, 1999, CAPTAIN DARRELL G. B OBER, DIRECTOR, INTERNAL AFFAIRS DIVISION, BUREAU OF PROFESSIONAL  
RESPONSIBILITY, WILL BE DETACHED TO THE BUREAU OF TECHNOLOGY SERVICES. B CAPTAIN OBER WILL FUNCTION AS TEAM LEADER FOR SYSTEM INT  
EGRATOR B PROCUREMENT FOR THE INCIDENT INFORMATION MANAGEMENT SYSTEM (IIMS) PHASE B OF THE DEPARTMENT AUTOMATION PROJECT. CAPTAIN  
OBER WILL RETURN TO THE B INTERNAL AFFAIRS DIVISION UPON COMPLETION OF THE ASSIGNMENT. B B  
OF THIS MESSAGE IS REQUIRED. B B AUTH\COLONEL PAUL J EVANKO\COMMISSIONER\PSD SLO  
2. NO ACKNOWLEDGEMENT

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ATTACHMENT

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EXHIBIT

#14

PENGAD-Beyonce, M. J.

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER,

Plaintiff

**VS.**

PAUL EVANKO, MARK CAMPBELL,  
THOMAS COURY, JOSEPH WESTCOTT,  
HAWTHORNE CONLEY,  
JOANNA REYNOLDS, AND  
SYNDI GUIDO

## Defendants

NO. 1: CV-01-0084  
(Judge Caldwell)

CIVIL ACTION - LAW

JURY TRIAL DEMANDED

**DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION TO  
DISMISS OR STRIKE PLAINTIFF'S SECOND AMENDED COMPLAINT**

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Dated: May 29, 2001

## EXHIBIT

#15

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### **PROCEDURAL HISTORY AND STATEMENT OF THE CASE**

On January 16, 2001, the plaintiff, Captain Darrell Ober, filed a civil rights complaint against State Police Commissioner Paul Evanko, Deputy Commissioner Thomas Coury, Deputy Commissioner Hawthorne Conley, former Deputy Commissioner Joseph Wescott, and the Governor's Chief of Staff, Mark Campbell. The thrust of Ober's complaint was that the defendants caused unspecified damage to his career because they were upset with Ober for not telling them about an FBI investigation into possible corruption at the State Police Academy. According to Ober, the defendants retaliated against him for going outside his chain of command and confiding in Lieutenant Colonel Hickes, who supposedly ordered Ober to keep the FBI investigation a secret from his superiors.

On March 16, 2001, defendants filed a motion to dismiss Ober's complaint, along with a supporting brief, which was authored, signed, and served by defendants' lead counsel, Syndi Guido. In that brief, defendants noted that Ober's decision to bypass his chain of command directly violated state police regulations. Unfortunately, to support that proposition, defense counsel mistakenly cited the wrong administrative regulation – incorrectly referencing AR 1-1.02(c) ("Chain of Command"), which had not been in effect during the relevant time period.

On April 2, 2001, Ober filed a brief opposing defendants' motion to dismiss, as well as a motion to amend his complaint and an amended complaint, which added Joanna Reynolds (Ms. Guido's cocounsel) as a defendant. In a curious turn of events, Ober accused Ms. Reynolds, rather than Ms. Guido, of attempting to defeat his claims by secretly altering state police regulations to add AR 1-1.02(c), intentionally misrepresenting facts to the Court, and removing the regulation's "historic file."

On April 19, 2001, defendants filed a reply brief, in which counsel readily admitted their citation error, explaining that it was unintentional and could be stricken without altering the substance

of their argument. At the same time, defendants moved to dismiss or strike Ober's amended complaint. That motion was granted on April 23, 2001.

On May 2, 2001, Ober filed a second amended complaint. Like his earlier filings, Ober's current complaint is comprised almost entirely of inflammatory rhetoric and conclusory allegations that are unsupported by factual averments.<sup>1</sup> In essence, Ober has merely reiterated his prior claims and added defendants' lead attorney, Syndi Guido, as another defendant, accusing her, as well as Ms. Reynolds, of abuse of process based on the previous citation to AR 1-1.02(c). This time, Ober also complains that defense counsel misrepresented another state police regulation, FR 1-1.17(B), in that same brief. (Plaintiff's Second Amended Complaint, filed May 2, 2001, at ¶¶ 54-56, 59-61).<sup>2</sup>

As Ober tells the story, his problems began while serving as Director of the Internal Affairs Division in the Bureau of Professional Responsibility. (Plaintiff's Second Amended Complaint, filed May 2, 2001, at ¶ 21.) In late September or early October 1998, an unnamed person from the FBI contacted Ober. *Id.* at ¶ 23. This FBI source supposedly had information from an anonymous informant that "high-ranking members of the PSP," as well as members of the Governor's Office, might be taking payoffs in exchange for giving special consideration to certain cadet applicants. *Id.* at ¶ 24. Ober was allegedly ordered not to divulge the investigation's existence to the Commissioner (Colonel Evanko) or Deputy Commissioners (Lieutenant Colonels Coury, Westcott, and Hikes). *Id.* at ¶ 25.

In spite of the FBI's directive, Ober felt he should report these allegations; yet he did not want to share the information with anyone he did not personally trust. *Id.* at ¶ 26. For that reason, Ober kept the investigation a secret from everyone in his chain of command and instead confided in

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<sup>1</sup>For example, Ober's complaint is peppered with accusations that the defendants' actions were "vile," "hateful," "irresponsible," and "outlandish," while consistently characterizing his own actions as "legal," "lawful," and "proper."

<sup>2</sup>In his second amended complaint, Ober has retracted his allegation that defendants removed the historical file on AR 1-1.02. Instead, Ober claims that the file does not comply with "PSP custom, practice, usages and regulations." *Id.* at ¶ 57.

Lieutenant Colonel Hickes.<sup>3</sup> *Id.* at 27. According to Ober, Lieutenant Colonel Hickes ordered him not to tell anyone else about the investigation. *Id.*

In May 1999, someone at the FBI informed Ober that any wrongdoing was limited to a single trooper. *Id.* at ¶ 28. On May 12, Ober and Hickes told Colonel Evanko about the FBI's investigation. Colonel Evanko was angry that it had been kept secret from him and decided to conduct an administrative inquiry into the facts surrounding Ober's involvement. *Id.* at ¶¶ 30-33. The Governor's Deputy Chief of Staff, Mark Campbell (now Chief of Staff), supposedly approved Colonel Evanko's request to conduct that investigation. *Id.* at ¶ 33. Ober believes that administrative inquiries such as this generally destroy an officer's reputation, causing him to be shunned, insulted, and ostracized. *Id.* at ¶ 37. Yet, he has not mentioned a single person who treated him in that fashion because of this particular administrative inquiry.

In any event, what actually sparked this litigation was Ober's eventual transfer to an assignment in Washington, Pennsylvania. Even though that transfer was not ordered until the end of January 2000 – more than eight months after the events that supposedly outraged Colonel Evanko – Ober insists it was done solely out of spite. *Id.* at ¶¶ 46, 46(a), 50; *Ober v. Evanko*, Pet. for Prelim. Inj., No. 35 M.D. 2000 (Pa. Commw. filed Jan. 26, 2000). To prevent being transferred, Ober filed a petition for mandamus in state court and requested a preliminary injunction. *Ober v. Evanko*, Pet. for Mandamus, No. 35 M.D. 2000 (Pa. Commw. filed Jan. 26, 2000). On January 27, 2000, in exchange for Captain Ober's withdrawal of his motion for a preliminary injunction, Colonel Evanko voluntarily rescinded Captain Ober's transfer to Washington and agreed to keep him in the Harrisburg area until

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<sup>3</sup>Although Ober also mentions that he briefly served as the Acting Director of the Bureau of Professional Responsibility, by the time the events in question occurred, Major Hawthorne Conley (now Lieutenant Colonel) was the Director of the Bureau of Professional Responsibility. In fact, Conley was promoted to Major and named Director of the Bureau on the same day that Hickes was promoted to Lieutenant Colonel and named Deputy Commissioner of Staff. As Bureau Director, Major Conley was Ober's supervisor, and Ober's chain of command reported to Colonel Evanko through Lieutenant Colonel Coury, Deputy Commissioner of Administration, rather than Lieutenant Colonel Hickes, who was Deputy Commissioner of Staff.

a final decision on Ober's mandamus petition. *Ober v. Evanko*, Petitioner's Mot. to Withdraw, App. A, No. 35 M.D. 2000 (Pa. Commw. filed Jan. 27, 2000).

On February 25, 2000, Colonel Evanko filed a motion to dismiss Ober's mandamus petition as moot. *Ober v. Evanko*, Respondents' Application to Dismiss for Mootness Pursuant to Pa.R.C.P. 1972(4), No. 35 M.D. 2000 (Pa. Commw. filed Feb. 23, 2000). In that motion, Colonel Evanko explained that Captain Ober had been transferred to Washington in order to assist the Area Commander in coordinating services at the Conference of the National Governors Association, which was to be held in Pennsylvania later that year. *Id.* at ¶ 3. Since Evanko had agreed to keep Ober in Harrisburg and the important Washington position needed to be filled immediately, Captain Dave Young, a Philadelphia resident, was transferred there from his position as Commander of the Organized Crime Section in Harrisburg. *Id.* at ¶¶ 5, 6. In the meantime, to fulfill his promise to Ober, Colonel Evanko temporarily assigned him as Central Section Commander of the Bureau of Liquor Control Enforcement (which oversees the entire central region of the state). *Id.* at ¶ 7. Based on these facts, the Commonwealth Court granted Colonel Evanko's motion and dismissed Ober's lawsuit as moot. *Ober v. Evanko*, No. 35 M.D. 2000 (Pa. Commw. Mar. 30, 2000).

Still, Ober was not happy. Even though he retained the same rank and pay, Ober did not like the fact that his new position had been previously held by a lieutenant. (Plaintiff's Second Amended Complaint, filed May 2, 2001, at ¶ 51.) Accordingly, Ober filed a second action under Pennsylvania's Whistleblowers' Law. *Ober v. Evanko*, Pet. for Review, No. 238 M.D. 2000 (Pa. Commw. filed May 9, 2000). That action was dismissed for failure to state a claim. *Ober v. Evanko*, 238 M.D. 2000, slip. op. at 6 (Pa. Commw. Sept. 6, 2000).

A few months later, Ober filed this federal lawsuit, repeating the averments he made in Pennsylvania's Commonwealth Court and supplementing them with an assortment of vague contentions and innuendo. For example, at some unknown time, Ober was supposedly denied

unspecified promotions, transfers, educational opportunities, and overtime, as well as reimbursement for unnamed “expenses.” (Plaintiff’s Second Amended Complaint, filed May 2, 2001, at ¶ 46(c),(d),(g),(h).) Ober contends he “was subjected to career destroying investigations,” without explaining what those investigations were about or how his career was adversely affected. *Id.* at ¶ 46(e). Similarly, Ober believes he was “constructively” demoted, somehow “destroying” his reputation and effectiveness among unmentioned “colleagues.” *Id.* at ¶ 46(b).

Ober also suggests that the defendants took “numerous actions” meant to injure him, “decimate” his career, and “hamper” his performance, but Ober has not described those actions or indicated how he was harmed by them. *Id.* at ¶ 46(j). Ober offers no factual support for the proposition that he has “suffered innumerable insults, humiliations, and embarrassments at the hands” of anonymous “PSP officers” who were somehow “made to fear they would suffer official retribution” if they treated Ober fairly. *Id.* at ¶ 47. In that same vein, Ober summarily concludes, without supporting facts, that he has been subjected to personal attacks and an atmosphere fostering retaliation, resentment, and harassment. *Id.* at ¶¶ 46(f),(i). Finally, Ober asks this Court to draw the unjustified conclusion that defense counsel colluded with their clients to retaliate against Ober for filing the original complaint by secretly changing a regulation and making intentional misrepresentations to the Court. *Id.* at ¶¶ 15a, 61, Wherefore Clause ¶ (j).

## **ARGUMENT**

### **I. Ober’s complaint must be dismissed for failure to state a claim.**

In assessing the sufficiency of Ober’s complaint, the Court must accept all factual inferences as true; however, the Court is free to look beyond Ober’s dramatic hyperbole. *See Doug Grant, Inc. v. Great Bay Casino Corp.*, 232 F.3d 173, 185 (3d Cir. 2000) (expressing displeasure at arguments “couched in hyperbole obfuscating the real issues”). In ruling on a motion to dismiss, the Court

should draw on the complaint's allegations in a "realistic, rather than slavish, manner" and avoid ruling based "upon the mere presence of words." *Id.* at 184.

To that end, the Court need not credit bald assertions, unsupported conclusions, or unwarranted inferences. *Id.* at 183-84 (court may reject unsupported conclusions and unwarranted inferences); *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (court may disregard bald assertions and legal conclusions). Moreover, fair inferences may be drawn from what a plaintiff does *not* plead in the complaint. *See Maio v. Aetna, Inc.*, 221 F.3d 472, 500 (3d Cir. 2000) (court may infer events did not occur if not alleged in the complaint); *accord Angus v. Shiley*, 989 F.2d 142, 147 (3d Cir. 1993).

Strident rhetoric aside, Ober's complaint contains very few factual averments. The sole allegation against Mark Campbell is that Colonel Evanko consulted him about Ober's failure to report the FBI investigation, and they decided to examine the matter further. The planned inquiry was apparently discussed at a meeting attended by Lieutenant Colonels Coury, Westcott, and Conley (who was then a Major in charge of the Bureau of Professional Responsibility). Except for attending that meeting, the only specific allegation against Lieutenant Colonel Coury is that he removed Ober from an assignment with the "PSP Centennial Book Committee," which Ober considered "prestigious." Ober is upset with Lieutenant Colonel Conley for taking his cell phone and denying some sort of "expenses." Apparently, former Lieutenant Colonel Westcott did nothing more than reject a recommendation for Ober to serve as the state police contact with the Pennsylvania Emergency Management Agency.

Thus, Ober's specific allegations against defendants Campbell, Coury, Westcott and Conley boil down to three facts: (1) They knew Colonel Evanko was conducting an administrative inquiry into the events surrounding Ober's decision to conceal his contact with the FBI from his commanding officers; (2) Ober was relieved of some secondary responsibilities; and (3) Ober did not get to keep a

cellular phone. Ober makes two additional allegations against Colonel Evanko, which do little to enhance his case. Without explaining why he was entitled to remain in Harrisburg, Ober attacks Evanko for transferring him to an assignment in Washington, Pennsylvania. Then, when Evanko allowed Ober to stay in the Harrisburg area, Ober complained because the position had previously been filled by a lieutenant. Taken as a whole, these factual allegations are insufficient to support any of Ober's claims for relief.

#### **A. Substantive Due Process Rights**

First, Ober accuses the defendants of violating his Fourteenth Amendment right to substantive due process. (Compl. ¶ 10; Wherefore Clause ¶ (b).) To prevail on this claim, Ober must show that the government deliberately and arbitrarily abused its power to deprive him of a property interest that is "fundamental" under the United States Constitution. *Nicholas v. Pennsylvania State Univ.*, 227 F.3d 133, 139-40 (3d Cir. 2000).

Not all property rights are protected by the concept of substantive due process. *Id.* at 140. So far, the Third Circuit has limited substantive due process protection to cases involving the ownership of real property. *Id.* at 141.<sup>4</sup> Less fundamental interests, such as rights created by contract, are not entitled to protection. *Id.* at 141-42 (tenured professorship at state university was not entitled to substantive due process protection); *Mauriello v. Univ. of Med. & Dentistry of New Jersey*, 781 F.2d 46 (3d Cir. 1986) (graduate student's interest in continued academic enrollment is not constitutionally protected). Likewise, reputation alone is not protected by due process. *Kelly v. Borough of Sayreville*, 107 F.3d 1073, 1077 (3d Cir. 1997).

Ober complains bitterly that his "rights" have been violated. However, Ober has not explained what fundamental, constitutionally-protected property interest he has in being assigned to

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<sup>4</sup> The majority of other circuit courts of appeal have adopted the same approach. See *Singleton v. Cecil*, 176 F.3d 419, 425-26 (8th Cir. 1999) (*en banc*) (state-law contract rights in employment are not fundamental Constitutional interests); accord *McKinney v. Pope*, 20 F.3d 1550, 1560 (11th Cir. 1994) (*en banc*); *Sutton v. Cleveland Bd. of Educ.*, 958 F.2d 1339 (6th Cir. 1992); *Huang v. Board of Governors of Univ. of North Carolina*, 902 F.2d 1134, 1142 n.10 (4th Cir. 1990).

any particular post, in serving on the Centennial Book Committee, in acting as the state police contact with PEMA, in being supplied with a cellular phone, or in having his expenses paid. Not one of these items rises to the level of a fundamental interest entitled to substantive due process protection. *See Kelly*, 107 F.3d at 1077 (police officer's allegations were insufficient to state a due process claim although he was subjected to a series of reprimands, disciplinary actions, reprisals, job-related actions, and damage to his reputation); *Nicholas*, 227 F.3d at 141-42 (tenured professorship unworthy of due process protection). Accordingly, Ober's due process claim should be dismissed.

#### **B. Privileges and Immunities Clause of the Fourteenth Amendment**

Next, Ober makes the confusing assertion that the defendants violated "his right to enjoy the protections afforded by the Privileges and Immunities Clause" of the Fourteenth Amendment. (Compl. ¶¶ 11; Wherefore Clause ¶ (d).) There is simply no basis for Ober's claim.

The privileges and immunities clause provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." U.S. Const. amend. XIV, §1. In essence, "when a state affords rights or privileges to its own citizens, it may not deny them to citizens immigrant from other states." *Galahad v. Weinshenk*, 555 F.Supp. 1201, 1206 n.3 (D.C. Colo. 1983).

To prevail on a "privilege and immunities" claim, a plaintiff must prove that: (1) he has a fundamental interest that is being burdened by a state of which he is not a citizen; and (2) the defendants did not have a substantial reason to discriminate against citizens of other states. This does not mean that states cannot discriminate against the citizens of other states. In fact, there may be perfectly valid reasons for doing so. The inquiry is whether reasons for the discrimination exist and whether the degree of discrimination bears a close relation to those reasons. *Toomer v. Witsell*, 334 U.S. 385, 396 (1948).

The privileges and immunities clause is plainly irrelevant to these facts. As discussed above, Ober has not pointed to any fundamental right that has been adversely affected. *See Salem Blue Collar Workers Ass'n v. City of Salem*, 33 F.3d 265, 270 (3d Cir. 1994) (public employment is not a fundamental right). More importantly, Ober does not claim discrimination based on his state citizenship. His privileges and immunity claim is baseless and must be dismissed.

### C. First Amendment Right to Free Speech

Ober also maintains that his First Amendment rights were violated by defendants Evanko and Campbell. (Compl. ¶ 12.) Ober then demands judgment against all the defendants for depriving him of his First Amendment “rights to be free of unlawful injurious employment actions in retaliation for his proper exercise of protected speech.” (Compl. Wherefore Clause ¶ (a).)

In analyzing a public employee’s retaliation claims, the Court must engage in a three-part analysis. Did the plaintiff engage in protected activity? *Czurlanis v. Albanese*, 721 F.2d 98, 103 (3d Cir. 1983). Was that protected activity a substantial or motivating factor in the alleged retaliatory action? *Id.* If the protected conduct had not occurred, would the employer still have taken the same action? *Givhan v. Western Line Consol. Sch. Dist.*, 439 U.S. 410, 416-17 (1979). The allegations in Ober’s complaint are insufficient to meet this test because Ober did not engage in protected conduct and the Commissioner’s actions were in no way retaliatory.

Ober has not explained exactly what “protected speech” he was supposedly punished for. However, there are only two instances of speech mentioned in Ober’s complaint: (1) In early October 1998, he told Lieutenant Colonel Hickes about the FBI investigation; and (2) in May 1999, Ober belatedly told Colonel Evanko about the investigation. Unless either of these incidents can be “fairly characterized as constituting speech on a matter of public concern” (as opposed to speech “upon matters of personal interest”), the reasons for the defendants’ actions are not subject to scrutiny by the courts. *Czurlanis*, 721 F.2d at 103 (quoting *Connick v. Myers*, 461 U.S. 138, 146-47 (1983)).

Here, Ober's decision to tell Hickes about the FBI's investigation was motivated by his personal interests, not public concern. According to Ober's complaint, the FBI expressly directed Ober *not* to divulge the existence of his investigation to the Commissioner or the Deputy Commissioners. (Compl. ¶ 25.) Despite those instructions, Ober wanted to share his secret with someone he personally trusted – Deputy Commissioner Hickes. (Compl. ¶¶ 26, 27.) Accepting Ober's allegations as true, his report to Hickes was contrary to any public interest involved. Ober's act not only ran counter to his duty to report matters through his chain of command, it also ran counter to the FBI's directive.

Likewise, Ober's belated report to Colonel Evanko was not protected speech. When Ober and Hickes learned that the FBI had exonerated everyone in the state police except a solitary trooper, they finally told the Commissioner what was going on. Significantly, Ober does not allege that Colonel Evanko retaliated against him because Ober knew of any independent evidence of corruption in the cadet selection program. Rather, Evanko was apparently upset when Ober confessed hiding the investigation from his superiors, a purely personal decision.

Moreover, Ober asks this Court to draw the unjustified conclusion that he was transferred to Washington, Pennsylvania, "in an irresponsible act of outlandish and extreme retribution" in a "hateful attempt to separate him from his children." (Compl. ¶¶ 46(a), 50.) Although the Court must accept Ober's factual allegations as true, it may reject unwarranted inferences such as this one. *Doug Grant*, 232 F.3d at 183-84. This is particularly true where Ober's reasoning is so clearly distorted.

Colonel Evanko first learned of the FBI's investigation, as well as the fact that Ober had kept it secret, in May 1999. Yet Ober was not transferred to Washington until eight months later. If Colonel Evanko's goal was to punish Ober, why would he have waited so long? During that eight-month period, why would Colonel Evanko have trusted Ober to be the "project manager on the largest and most technical law enforcement project in PSP history"? (Compl. ¶ 50.) More

importantly, why would the Commissioner transfer Ober to a post as significant as Assistant to the Task Commander for the National Governors Association's Conference? If Colonel Evanko's sole motivation was a desire to punish Ober by separating him from his family, why would the Commissioner also have "punished" Captain Young, a Philadelphia resident and Commander of the Organized Crime Unit, by sending him to Washington in Ober's stead? Quite simply, Captain Ober's reasoning defies logic, his conclusions are not supported by the facts he has alleged, and Ober's retaliation claim should be dismissed.

#### **D. Fourth Amendment Rights**

Ober makes another puzzling claim – that the defendants violated his Fourth Amendment rights by subjecting him to "custodial investigations" and "invasions of privacy in a series of investigations and administrative actions." (Compl. ¶ 14; Wherefore Clause ¶ (c).) Accepting all of Ober's averments as true, it is clear he was never subjected to an unlawful seizure within the meaning of the Fourth Amendment. Ober was not seized as a suspect in a criminal case; he was interviewed during an administrative inquiry, which does not implicate the Fourth Amendment. *See Garrett v. Lehman*, 751 F.2d 997, 1004 (9th Cir. 1985) (holding the exclusionary rule of Fourth Amendment not applicable to military administrative discharge proceedings).

Issues of custodial interrogation arise under the Fifth Amendment, not the Fourth Amendment. Assuming Ober's complaint somehow implicitly alleges a Fifth Amendment claim, the concept of "custodial interrogation" is still inapplicable because it only arises in the context of criminal cases. *See California v. Byers*, 402 U.S. 424, 434 (1971) (statutory requirement that drivers involved in accidents stop and provide identification did not violate the Fifth Amendment when the purpose was civil not criminal). Ober's factual averments do not have Fourth or Fifth Amendment implications, and these claims must be dismissed.

### **E. Equal Protection**

Evanko and Campbell are also said to have discriminated against Ober in violation of the equal protection clause. (Compl. ¶ 12.) Ober then demands judgment against all of the defendants on this count. (Compl. Wherefore Clause ¶ (h).) To make out an equal protection claim, Ober must establish that he is part of a suspect classification or that he has been deprived of a fundamental right. *Harrah Indep. Sch. Dist. v. Martin*, 440 U.S. 194, 199 (1979). He has done neither. Accordingly, Ober's equal protection claim cannot stand.

### **F. Right to Be Free of Civil Conspiracies and Emotional Distress**

Next, Ober alleges that the defendants supposedly violated his rights "to be free of civil conspiracies" and "emotional distress." (Compl. ¶¶ 13, 15; Wherefore Clause ¶¶ (e)-(g)). There is no federal constitutional right to be free of emotional pain and mental distress. In order to state a conspiracy claim under § 1983, there must be an underlying constitutional deprivation. *Dixon v. City of Lawton*, 898 F.2d 1443, 1449 (10th Cir. 1990). Ober has not made out a case of any constitutional violation; accordingly, these claims fail.

### **G. Abuse of Process**

Finally, in accusing defense counsel of violating his "federally guaranteed right" to be "free of abuse of legal process," Ober has chosen to take a simple mistake and blow it completely out of proportion. Defense counsel have readily admitted that, earlier in this litigation, they erroneously cited an administrative regulation (AR 1-1.02(c)) that did not exist at the relevant time. Without any basis in fact, Ober stubbornly insists that this mistake must have been an intentional misrepresentation. To compound matters, Ober has added the entirely specious assertion that counsel also misrepresented a field regulation, FR 1-1.17(B), which states, "Members shall promptly report to their supervisor any information which comes to their attention and *which tends to indicate* that any other member or employe has violated any law, rule, regulation or order." (Emphasis added). To the

contrary, defense counsel correctly described that regulation as “requiring members to promptly notify their supervisor when they receive any information indicating another member might have violated the law.” (Defendants’ Reply Brief, filed March 16, 2001.)

Regardless, neither of these two citations constitutes any sort of “abuse of legal process.” As commonly understood, the term “process” refers to a summons, or summons and complaint, or a writ. Blacks Law Dictionary, 7<sup>th</sup> Edition (West 1999). Process “issues forth in order to bring the defendant into court.” *Id.* An action for abuse of process lies when a party employs legal process for some unlawful object. *Jennings v. Shuman*, 567 F.2d 1213, 1214 (3d Cir. 1977). In this case, defendants have not attempted to use process for any improper purpose; they have merely defended against a suit initiated by Ober. Thus, even if the citation error had been intentional, the alleged facts would not give rise to a cause of action for abuse of process.

**II. To the extent Ober’s suit is brought against defendants in their individual capacities, they are protected by qualified immunity.**

In the introduction to his complaint, Ober states that his suit is brought against Commissioner Evanko in his individual capacity. (Introduction to Plaintiff’s Second Amended Complaint, filed May 2, 2001.) The complaint does not indicate whether the remaining defendants are being sued in their official or individual capacities. To the extent Evanko and the other defendants have been sued in their individual capacities, they are protected by qualified immunity.

Qualified immunity should be determined at the earliest possible stage because it constitutes immunity from suit and discovery, not just a defense to liability. *Anderson v. Creighton*, 483 U.S. 635, 646 n.6 (1987) (qualified immunity protects public officials from disruptive discovery); *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (qualified immunity is a threshold question). In any qualified immunity analysis, the court must determine whether the plaintiff has presented a constitutional right that was clearly established at the time of the defendants’ actions. *See Seigert v. Gilley*, 500 U.S. 226, 231 (1991) (court determines not only the currently applicable law, but whether that law was

clearly established at the time the action occurred). To be clearly established, the right's contours must have been obvious enough that a reasonable official would have known his actions violated that right. *Anderson*, 483 U.S. at 640.

As discussed above, Ober has not shown a violation of any clearly-established constitutional right. Assuming Ober's complaint sets forth the requisite constitutional violation, defendants still cannot be held liable because it was objectively reasonable for them to believe their actions were constitutional. *Harlow*, 457 U.S. at 819 (government officials performing discretionary functions are shielded from liability for civil damages unless their conduct violates clearly established constitutional or statutory rights that a reasonable person should have known about).

Even though Ober is upset that Colonel Evanko decided to examine his actions, as Commissioner of the State Police, Colonel Evanko is ultimately responsible for the conduct of every member of the force. Pennsylvania State Police Field Regulation, FR 3-3.04. The Commissioner also has a duty to maintain the State Police Academy. 71 P.S. § 251(a). On May 12, 1999, Colonel Evanko first learned that Ober had been contacted by the FBI about possible corruption in the academy. Evanko also learned that Ober had reported the matter to Lieutenant Colonel Hickes rather than Major Conley or Lieutenant Colonel Coury.

Ober's actions violated departmental regulations governing the receipt of information about possible misconduct. FR 1-1.17(B) (requiring members to promptly notify their supervisor when they receive any information indicating another member might have violated the law); AR 4-25.10 (B)(1) (requiring personnel to record every allegation of misconduct, whether anonymous, verbal, or written on a Use of Force or Complaint Reception and Processing Worksheet); FR 1-1.28 (requiring members to immediately prepare a written statement when any complaint is received indicating misconduct of personnel so that a record will be available for future reference).

Moreover, as Ober's supervisor and Director of the Bureau of Professional Responsibility, it was the responsibility of Major Conley, not Lieutenant Colonel Hickes, to determine what action should have been taken with respect to the information received from the FBI. *See* AR 4-25.01 (granting the Bureau of Professional Responsibility, Internal Affairs Division, authority over all allegations of misconduct by personnel); AR 4-25.08(B) (placing responsibility for all investigations into alleged misconduct upon the Director of the Bureau of Professional Responsibility); AR 4-25.09(A), (B) (making it the responsibility of the Director of the Bureau of Professional Responsibility to determine whether the Internal Affairs Division will investigate allegations of misconduct); AR 4-25, Appendage I(D)(3) (granting the Director of the Bureau of Professional Responsibility the discretion to determine whether an investigation is appropriate); FR 3-3.05(B) (holding Directors accountable for the conduct and performance of members under their immediate command).

After learning that Ober had reported to Lieutenant Colonel Hickes without consulting Major Conley, it was well within Commissioner Evanko's authority to investigate that unauthorized breach in the chain of command. *See* FR 3-3.04 (holding the Commissioner responsible for the conduct of every member of the force); AR 4-25.09(A)(11) (indicating that Commissioner may request administrative investigations); AR 4-25.04(B) (defining administrative investigation as "[i]nquiries into alleged misconduct by personnel or any inquiry into the actions of Department personnel required by directives where no misconduct is alleged.")

Ober further suggests there was something improper about Colonel Evanko consulting the Governor's Deputy Chief of Staff, Mark Campbell, about Ober's conduct. Colonel Evanko's conduct was not only reasonable, it was entirely appropriate under Pennsylvania law.

The Pennsylvania State Police is charged with the duty of assisting the Governor in administering Pennsylvania's laws, and the Commissioner is the head and chief executive officer of

the agency. 71 P.S. §§ 250(b), 251(a). The State Police Commissioner is appointed by the Governor. 71 P.S. §§ 67.1(d)(1), 1192. With the Governor's approval, the Commissioner prescribes the rules and regulations governing state police officers' conduct. 71 P.S. § 251(a). Accordingly, it is difficult to understand what Ober finds inappropriate about Colonel Evanko advising the Governor, through his Deputy Chief of Staff, about the FBI's investigation and the way it had been mishandled by personnel under Evanko's command. Under the circumstances, both Evanko and Campbell are protected by qualified immunity.

Next, Ober complains that, many months after the May 1999 disclosure to Evanko, he was transferred and "constructively demoted." Significantly, Ober does not claim to have suffered a reduction in either rank or pay – even during the three months he was temporarily assigned to head the state's Central Section of the Bureau of Liquor Control Enforcement.

State law authorizes the Commissioner to assign members of the state police so as to effect the most efficient performance of the force's law enforcement duties. 71 P.S. § 251 (Commissioner has the duty to efficiently distribute the force throughout the Commonwealth); Pennsylvania State Police Field Regulation 3-2.04(A) (giving Commissioner the authority to transfer members as needed to fulfill the requirements for additional services, specific or specialized skills or to accomplish any other needs of the Department); *see also Hunt v. Dunn*, 439 A.2d 240, 242 (Pa. Commw. 1982) ("the Commissioner has discretion founded on the need of the service in ordering transfers").

The Commissioner had a reasonable basis for believing he could transfer Ober from the Internal Affairs Division to a position where Evanko felt he would be most useful. Indeed, it "is a generally accepted practice to periodically rotate members assigned to an Internal Affairs Division." AR 4-25.11(B). In this type of command decision, the Court should not substitute its judgment for that of the Commissioner. The Commissioner is protected by qualified immunity for the transfer decisions he made regarding Ober.

Likewise, Deputy Commissioners Coury, Conley and former Deputy Commissioner Westcott are entitled to qualified immunity for their actions. They may have known that Colonel Evanko ordered an administrative inquiry, but the Constitution does not prohibit Ober's employers from examining the manner in which he did or did not carry out his duties. Even if the Deputy Commissioners decided not to have Ober serve on the Centennial Book Committee or act as the PEMA contact, what right were they violating? Similarly, the state police had no constitutional duty to pay Ober's expenses or provide him with a cellular phone. In short, there was nothing objectively unreasonable about any of the Deputy Commissioners' actions. *See Kelly*, 107 F.3d at 1077 (in a case where a police officer is not suspended, removed, fined, or reduced in rank, no deprivation of property right is alleged and claim should be dismissed). Consequently, Ober's complaint should be dismissed.

**III. To the extent Ober's suit is against defendants in their official capacities, it is barred by sovereign immunity.**

As mentioned above, with the exception of Colonel Evanko, Ober's complaint does not indicate whether the defendants have been sued in their official or individual capacities. To the extent that Ober's action is brought against the defendants in their official capacities, it is barred by the Eleventh Amendment.

The Eleventh Amendment immunizes states from suit in federal court, and that immunity extends to a state's departments, agencies, and officials acting in their official capacities. *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44 (1996). A state may waive this immunity, but that waiver must be unequivocal. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98 (1984). Similarly, although Congress has the power to abrogate sovereign immunity with respect to rights guaranteed by the Fourteenth Amendment, an unequivocal expression of Congressional intent is also required. *Id.*

Pennsylvania has not waived its immunity, and Congress has not abrogated the states' immunity in the Civil Rights Act, 42 U.S.C. § 1983. *See* 42 P.S. § 8521(b) (expressly withholding consent to be sued in federal court); *Laskaris v. Thornburgh*, 661 F.2d 23 (3d Cir. 1981) (Pennsylvania has not waived its immunity); *Will v. Michigan, Dep't of State Police*, 491 U.S. 58, 67 (1989) (42 U.S.C. § 1983 does not abrogate sovereign immunity).

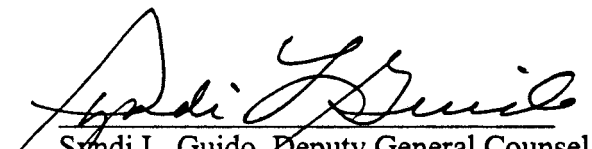
Moreover, even though the Eleventh Amendment permits a plaintiff to sue state officials for injunctive relief in order to end continuing violations of federal law, they cannot be sued in their official capacity for monetary damages. *Will*, 491 U.S. at 71. Monetary damages are the only form of relief Ober has requested; therefore, federal claims are barred by the Eleventh Amendment.

Ober's state law claims are likewise barred. Under Pennsylvania law, state employees enjoy sovereign immunity except in those situations where the General Assembly has waived that immunity. 1 Pa.C.S. § 2310. Our Legislature has carved out nine narrow exceptions to the rule of immunity, none of which apply to plaintiff's claims. *See* 42 Pa.C.S. § 8522, *Shoop v. Dauphin County*, 766 F.Supp. 1327 (M.D. Pa. 1991), *aff'd*, 945 F.2d 396 (3d Cir. 1991), *cert. denied*, 502 U.S. 1097 (1992) (finding that a state trooper had immunity from plaintiff's intentional tort claims, including a claim for the infliction of emotional distress).

### CONCLUSION

For all the foregoing reasons, defendants' respectfully ask this Court to dismiss Ober's complaint with prejudice.

Respectfully submitted,

  
Syndi L. Guido, Deputy General Counsel  
Joanna N. Reyholds, Assistant Counsel

May 29, 2001

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARRELL G. OBER,

Plaintiff

vs.

PAUL EVANKO, MARK  
CAMPBELL, THOMAS COURY,  
JOSEPH WESTCOTT,  
HAWTHORNE CONLEY,  
JOANNA REYNOLDS,  
AND SYNDI GUIDO

Defendants

NO. 1: CV-01-0084  
(Judge Caldwell)

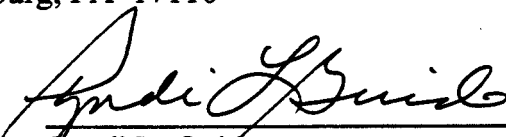
CIVIL ACTION - LAW

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I hereby certify that, on this date, I served a copy of defendants' brief in support of their motion to dismiss or strike plaintiff's second amended complaint, as well as the supporting exhibits, upon plaintiff's counsel by First Class Mail, U.S. Postal Service, addressed as follows:

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Syndi L. Guido

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Dated: May 29, 2001

EXHIBIT A





**PENNSYLVANIA STATE POLICE  
DEPARTMENT DIRECTIVE**

**AR 4-25  
9/2/93**



**SUBJECT: INTERNAL INVESTIGATIONS**

**25.01 AUTHORITY**

The Bureau of Professional Responsibility (BPR), Internal Affairs Division, is authorized to recommend to the Commissioner policies and procedures to initiate, conduct and/or control all necessary investigations, and to process all complaints or allegations of misconduct by personnel. Members of the Bureau of Professional Responsibility, when performing Internal Affairs duties, are vested with the line authority of the Commissioner.

**25.02 PURPOSE**

The purpose of this regulation is to establish a prompt, fair, thorough, factual and impartial means to investigate complaints or allegations involving personnel.

**25.03 GOALS**

- A. Protection of the Public: The public has the right to expect efficient, fair and impartial law enforcement. Any misconduct by personnel must be detected, thoroughly investigated and properly adjudicated to assure these goals.
- B. Protection of the Department: The integrity of the Department depends on the personal integrity and self-discipline of all personnel. When an informed public knows that the Department honestly and fairly investigates and adjudicates all allegations of misconduct against its personnel, confidence will be promoted and public support will be enhanced.
- C. Protection of Personnel: A thorough investigation of all allegations of misconduct serves to protect the integrity of personnel and will safeguard against false or malicious complaints.

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- D. Discovery of Unsatisfactory Performance: Personnel who demonstrate an inability to satisfactorily perform their duties must be identified for the protection of the public, the Department and its personnel.

#### 25.04 DEFINITIONS

- A. Administrative Action: Corrective action taken by command/supervisory personnel which may include the issuance of a Disciplinary Action Report (DAR), Form SP 3-336.
- B. Administrative Investigation: Inquiries into alleged misconduct by personnel or any inquiry into the actions of Department personnel required by directives where no misconduct is alleged.
- C. BPR Control Number: A sequential number assigned by the Internal Affairs Division to index all complaints and administrative investigations.
- D. Bureau Register: A compilation of data indexing the initiation and processing of administrative investigations by BPR Control Number.
- E. Complainant: A person with knowledge of an alleged incident of misconduct, or violation of a statute or Department directive, who brings the information to the attention of the Department.
- F. Complaint: Any allegation of misconduct made against Department personnel.
- G. Complaint Investigation: An administrative investigation which was initiated because of a complaint.
- H. Full Investigation: An in-depth investigation in which all pertinent facts are gathered and are thoroughly and impartially reported in a General Investigation Report, Form SP 7-0025.
- I. Limited Investigation: An investigation which is reported by Correspondence, Form STD-501, and clearly establishes that:
1. The alleged misconduct failed to constitute a violation of Department rules and regulations.

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2. The complainant was mistaken and the misconduct alleged was not attributed to personnel.
  3. The complaint appears to be as a result of official police action which was adverse to the complainant and alleges only a de minimus violation.
  4. The complainant(s) refused to verify their complaint by signing a completed Complaint Verification Form and the nature of the complaint does not include allegations of criminal conduct or conduct which could reasonably be construed to result in a recommendation of court-martial by the Department Disciplinary Officer.
- J. Medical Treatment: Care received at a recognized medical facility or from a licensed medical practitioner.
- K. Misconduct: Any violation of the Pennsylvania State Police Code of Conduct or any other conduct which could reasonably be expected to destroy public respect and confidence in the Pennsylvania State Police.
- L. Non-Complaint Investigation: An investigation into the actions of Department personnel as provided by directive or requested by the Office of Chief Counsel, and no misconduct is alleged.
- M. Performance Inadequacies: Minor infractions of omission/commission by a member which violate a Department policy or regulation. Infractions of this type do not include conduct which involves compliance to lawful orders, the veracity of a member, criminal or civil liability, or publicity which may adversely affect the Department or its personnel.

#### 25.05 COMPLAINT INVESTIGATION CATEGORIES

- A. Physical Abuse: An allegation that an individual was physically mistreated or assaulted (does not include physical force investigations that are initiated by Department directive with no complaint).

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- B. Verbal Abuse: An allegation that profane or demeaning language was directed at the complainant or another person by personnel.
- C. Criminal Conduct: Any alleged violation(s) of federal, state or local statutes.
- D. Improper Conduct On Duty: Any alleged misconduct committed while on duty that, by its very nature, is demeaning to the professional image of the Department, and constitutes a violation of Department rules and regulations.
- E. Improper Conduct Off Duty: Any alleged conduct which could reasonably be expected to impact negatively upon the public's perception of the Department even though it occurred off duty.
- F. Dissatisfaction With Performance of Duty: An allegation that personnel failed to adequately perform or document a required or expected task, e.g., improper or incomplete accident or criminal investigations, failure to assist a disabled motorist, etc.
- G. Other: Allegations that are not easily categorized or identified as falling into a specific category, etc.

#### 25.06 NON-COMPLAINT INVESTIGATION CATEGORIES

- A. Legal Intervention: Incidents when a member/enforcement officer, while in the course of their duties, intentionally involves a vehicle in a collision or establishes a roadblock which results in a collision, for the purpose of preventing the escape of a subject.
- B. Shooting Incident: Incidents when a member/enforcement officer discharges a weapon, including tear gas; another law enforcement officer discharges a weapon in the presence of a member/enforcement officer; or, a subject fires a weapon while a member/enforcement officer is present. Exceptions are listed in Section 25.10 E. 9.
- C. Physical Force Incident: Incidents when a member/enforcement officer uses physical force which results in death, or injury which requires medical treatment to any involved individual other than the member/enforcement officer.

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- D. Attorney Work Product: Investigations conducted at the request of the Office of Chief Counsel.

## 25.07 DISPOSITIONS

### A. Complaint Investigations:

1. Sustained: Investigation indicates misconduct did actually occur.
2. Not Sustained: Investigation failed to conclusively prove or disprove the allegation.
3. Unfounded: Indicates that the incident did not or could not have occurred as alleged.
4. Policy Void: Indicates that the action of the Department or the involved member(s) was consistent with Department policy, but the complainant still suffered harm.
5. Withdrawn: Indicates that the complainant refused to sign a Complaint Verification and the investigation was terminated or an investigation was otherwise concluded on advice of the Director, Bureau of Professional Responsibility.

### B. Non-Complaint Investigations:

1. Justified: The actions taken were within the guidelines, for the use of force under the existing circumstances, as established by the Department.
2. Improper: The actions taken exceeded the limits defined by the Department or by law for the use of force.

## 25.08 DUTIES AND RESPONSIBILITIES

- A. Personnel: Personnel shall ensure that the confidentiality of all complaints is maintained in accordance with existing regulations.

- B. Director, Bureau of Professional Responsibility: The Director, Bureau of Professional Responsibility shall:

1. Assign and coordinate all investigations required by this regulation. Depending on the

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nature of the incident, the investigation may be conducted by a member of the Internal Affairs Division or assigned to a Commissioned Officer or noncommissioned officer of the Director's choice.

2. Assist the Affirmative Action Officer in the investigation of affirmative action-related complaints upon request. Also, review other such complaints and investigations in consultation with the Affirmative Action Officer.
3. Ensure that all investigations are conducted in a fair, prompt, thorough and impartial manner. Reports shall be completed in a timely manner and within established statutes of limitations per collective bargaining agreement.
4. Retain supervisory responsibility for all investigations. Specific investigative procedures may be ordered if it is determined to be necessary, prudent or desirable.
5. Furnish an acknowledgement of receipt, in writing, to the complainant. Refer to Appendage III.
6. Provide a report, as requested, summarizing the Internal Affairs Division's activities, to the Commissioner/designee.

C. Director, Internal Affairs Division: The Director, Internal Affairs Division shall:

1. In the absence of the Director, Bureau of Professional Responsibility, assume all duties relative to the administration of the internal affairs function.
2. Exercise supervisory control over all investigations assigned to members of the Internal Affairs Division.
3. Ensure all investigations are conducted in a fair, prompt, thorough and impartial manner.
4. Make the notifications to the Office of Chief Counsel as outlined in Sections 25.10 D. 1. and 25.10 E. 1.

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D. Area Commanders/Bureau Directors: The Area Commanders/Bureau Directors shall:

1. Review all investigative reports in a timely manner and within established statutes of limitations per collective bargaining agreement.
2. Provide guidance and advice to the Troop Commander/Division Director responsible for making administrative decisions.
3. Assume the responsibilities enumerated in Section 25.08 E. when the subject of the investigation is a Troop Commander/Division Director under their command, or as directed by a Deputy Commissioner.
4. Endorse the Troop Commander's/Division Director's administrative decision by indicating concurrence or nonconcurrence.
  - a. In cases of verbal abuse or dissatisfaction with performance of duty, a simple statement of this finding shall suffice if there is concurrence. All statements of nonconcurrence require a full explanation of points of difference.
  - b. Allegations, other than verbal abuse and dissatisfaction with performance of duty, require an endorsement indicative of an independent review of the facts.

E. Troop Commanders/Division Directors: Troop Commanders/Division Directors shall:

1. Ensure compliance with the provisions of this regulation.
2. Determine, in concurrence with the Director, Bureau of Professional Responsibility, whether an investigation shall be a full or limited investigation.
  - a. Upon receipt of a Use of Force or Complaint Reception and Processing Worksheet, Form SP 1-101, in which the allegation involves only performance inadequacies, the Troop

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Commander/Division Director shall contact the Disciplinary Officer and provide the details of the complaint.

- b. If the Disciplinary Officer concurs with the Troop Commander/Division Director that the complaint involves only performance inadequacies, the Disciplinary Officer shall contact the Director, Bureau of Professional Responsibility, for concurrence. The Director, Bureau of Professional Responsibility, shall then ensure contact is made with the Troop Commander/Division Director and provide them with a BPR Control Number.
  - c. For issues relating to performance inadequacies, the Troop Commander/Division Director shall be responsible for ensuring the preparation and submission of the Review of Performance Complaint, Form SP 1-101A. This report shall be appended to the Use of Force or Complaint Reception and Processing Worksheet, and a copy forwarded to the Bureau of Professional Responsibility for retention. The Troop Commander/Division Director shall retain a copy of this report and maintain it in a supervisory file established for that purpose.
  - d. In all other cases, concurrence must be obtained directly from the Director, Bureau of Professional Responsibility, regarding the scope of investigations to be conducted.
  - e. Inform the Director, Bureau of Professional Responsibility of those cases when a complainant refuses to sign a Complaint Verification after being requested to do so by a Troop/Bureau investigator.
3. Assign a Lieutenant or noncommissioned officer, outside of the subject's chain of command, to those investigations required by this regulation which are to be investigated

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at the Troop/Division level. An investigator in the subject's chain of command may be assigned when warranted by circumstances. All assignments shall be made in concurrence with the Director, Bureau of Professional Responsibility, prior to actual assignment.

NOTE: When the subject is a Pennsylvania State Troopers Association (PSTA) member, PSTA officers (President, Vice-President, Secretary, Treasurer) or members of the Grievance Committee shall not be assigned to conduct the investigation.

4. Assist members of the Internal Affairs Division in investigations required by this regulation upon request.
5. Notify affected personnel of the results of the investigation as soon as practicable and within established statutes of limitations. Notices to personnel who had previously been issued a Notification of Inquiry, Form SP 1-102, shall be made in writing, by either correspondence or initiation of administrative action. The correspondence shall include a specific disposition using one of the defined terms contained in this directive.
  - a. If the disposition of the investigation is unfounded, the subject shall not be counseled. Other performance issues uncovered through the investigation shall be addressed in separate correspondence or by counseling, which shall be made a part of the supervisory file.
  - b. If an allegation is not sustained, the member may be counseled on relevant regulations or directives.
6. Initiate administrative action when warranted, upon receipt of an investigation, in accordance with AR 4-9 or FR 3-3. When administrative action is initiated in accordance with FR 3-3, the Troop Commander/Division Director shall prepare a detailed summary outlining the basis for discipline. The summary will be provided to the member as required by existing collective bargaining agreements. If a DAR is issued, a copy of the summary will be forwarded as an attachment to

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the supplemental General Investigation Report. The DAR and a copy of the summary will also be forwarded under separate cover to the Disciplinary Officer. When administrative action is initiated for employees, the provisions of AR 4-9 shall be applicable.

7. Institute the following steps when an investigation is reviewed and it is discovered that someone other than or in addition to the individual listed in Block 4 of the Use of Force or Complaint Reception and Processing Worksheet has violated Department policies, regulations or procedures and there is a likelihood that a DAR will be issued:
  - a. Advise the additional subject(s) of the complaint by issuing a Notification of Inquiry, Form SP 1-102.
  - b. Direct the subject(s) to submit correspondence, STD-501, to the Troop Commander/Division Director addressing the issue(s) listed in the Notification of Inquiry.
  - c. List the subject(s) in Block 5 of the supplemental General Investigation Report.
  - d. Direct further investigation or, if the investigation is complete, initiate the review process.
8. Notify the complainant of the results of the investigation, either verbally or in writing. Notify public officials who were interviewed, such as district attorneys, judges, etc., either verbally or in writing, of the results of the investigation if it is unfounded. These notifications shall be noted in the supplemental General Investigation Report.
9. Refer the investigation, if circumstances warrant, to the appropriate Criminal Investigation Unit when the facts of the investigation reveal that false information has been provided with the intent to implicate personnel in the commission of a crime, or the facts indicate other criminal conduct on the part of the complainant.

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F. Investigators: Investigators shall:

1. Ensure that all investigations conducted are thorough and impartial.
2. Contact the Director, Bureau of Professional Responsibility immediately whenever investigative difficulties occur or when assistance is desired in any phase of the investigation.
3. Assist federal, state, county and municipal law enforcement agencies with investigations wherein personnel may be implicated in illegal activities or other acts of misconduct.
4. Assist, upon request, the Office of Chief Counsel, in preparing cases when personnel are subjected to administrative action and/or criminal action, and conduct an investigation into factual allegations contained in civil actions, claims or other notices which could expose the Department or its personnel to civil liability.
5. Notify the Director, Bureau of Professional Responsibility, immediately, when it becomes apparent by the facts gathered during an investigation that the Department may be the subject of civil litigation.
6. Obtain a written prosecutorial decision from the district attorney in all cases where the conduct alleged may be criminal in nature. This decision should be obtained prior to the issuance of the Administrative Warning. The Director, Bureau of Professional Responsibility, shall be notified in the event the district attorney declines to render such written prosecutorial decision, or fails to render same in a timely manner.
7. When practical, the subject(s) shall be given reasonable notice of the time, date and location of their interview. They should be informed of their right to have a union representative present at the interview. In all cases, requests for union representation during an interview by a subject(s) of an investigation shall be granted.

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NOTE: The subject(s) assumes responsibility for arranging for such representation. Absent exigent circumstances, the subject(s) shall be provided reasonable time to arrange for representation. The subject(s) has no right to a specific representative, only to one that is the nearest and most readily available.

8. Ensure the constitutional rights specified in Miranda v. Arizona and Garrity v. New Jersey are protected; and provisions granted by existing collective bargaining agreements are not violated. (Refer to Appendages IX and X.) Issue the Administrative Warning, Form SP 1-104 (Appendage VIII), in administrative investigations to further advise the subject(s) of the investigation of their rights under "Garrity"; that the questioning concerns administrative matters relating to the official business of the Department. The Rights Warning and Waiver Notice to Pennsylvania State Police Personnel, Form SP 1-103 (Appendage IX), shall be given to the subject(s) of the investigation to advise of rights under "Miranda" when there is the possibility of criminal charges.
9. Issue the Notification of Inquiry as soon as practical to the affected personnel. In those cases where the investigation could be impeded or compromised, the investigator shall determine the appropriate time to issue the notification. (Refer to Appendage IV.)
10. Any subject interviewed in regards to an investigation who has reason to believe their statements could result in administrative action being taken against them, shall be afforded union representation if requested.
11. Provide personnel, who are required or requested to sign any forms during a BPR investigation, with a copy of any signed forms.
12. When applicable, transcribe the complaint on the Complaint Verification, Form SP 1-108, Appendage XII and obtain the complainant's signature.

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G. Personnel Receiving Complaints: Personnel receiving complaints shall:

1. Receive complaints against personnel in a courteous manner.
2. Document complaints when they are received. Complainants shall not be advised to call back later to speak with a supervisor or instructed to contact the Bureau of Professional Responsibility directly. This does not prohibit supervisors from recontacting a complainant to clarify complaint information.

NOTE: Personnel desiring to initiate a complaint shall be responsible for completing their own Use of Force or Complaint Reception and Processing Worksheet.

3. Ensure the confidentiality of all complaints is maintained.
4. Process all complaints in accordance with the provisions of this regulation.

H. Personnel Who are the Subject of an Administrative Investigation:

1. May at any time during the course of an internal investigation, be ordered by the appropriate authority to submit to any or all of the following:
  - a. Breath test.
  - b. Urine test.
  - c. Blood test.
  - d. Polygraph test.
  - e. Lineup.
  - f. Medical/psychological/psychiatric examination.
  - g. Any other non-testimonial evidence test.
  - h. Questioning related to alleged misconduct or performance of duty.

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2. Shall be advised that none of the results of the tests or information received from the procedures listed in Section 25.08 H. 1., can be used against them in a criminal prosecution.
  3. Shall, upon direction of the investigating officer or other authority, be required to submit correspondence related to the alleged misconduct or performance of duty. Absent exigent circumstances the submission shall be within 48 hours of being directed to do so. The 48 hours can be extended with the approval of the investigating officer or the Director, Bureau of Professional Responsibility.
  4. Shall be interviewed by the investigating officer.
  5. May obtain the results of any of the test/examination procedures listed in Section 25.08 H. 1. upon written request to the Director, Bureau of Professional Responsibility. The results may be provided in the form of a copy or other written documentation.
  6. Shall be afforded all rights contained in existing collective bargaining agreements.
  7. Shall maintain confidentiality of investigations until completed.
  8. Shall cooperate and answer all questions honestly and completely.
- I. Personnel Who are the Subject of a Criminal Investigation: Personnel who are the subject of a criminal investigation shall be afforded the constitutional protections which are guaranteed as a result of United States Supreme Court decisions in Miranda v. Arizona and Garrity v. New Jersey, as applicable.

#### 25.09 INVESTIGATIVE ASSIGNMENT CRITERIA

- A. Circumstances: Administrative investigations conducted under the following circumstances are subject to the provisions of this directive and the Internal Affairs Division may, at the discretion of the Director, Bureau of Professional Responsibility, retain primary investigative responsibility:

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1. Shooting incidents and physical force incidents as defined in directives, regardless of personnel duty status.
2. Any allegation of criminal conduct directed against personnel.
3. Any allegation of misconduct directed against members.
4. Citizen complaints or any allegation of misconduct directed against personnel which could result in termination of employment. The provisions of AR 4-9 shall apply to performance inadequacies and/or cases of minor misconduct, e.g., traffic citations.
5. Allegations of violations of AR 4-6, FR 1-1 and other allegations of discrimination, harassment or violation of civil rights.
6. Investigations initiated in accordance with FR 6-4, legal intervention.
7. Investigations initiated as a result of contemplated administrative action related to FR 6-4.
8. Investigations initiated in accordance with FR 5-4.
9. Motor vehicle accidents resulting in the death of any person when:
  - a. Pursuit is a factor.
  - b. A Department vehicle is involved.
10. Any dog bite resulting from a Canine Enforcement Team requiring treatment by a licensed medical practitioner.
11. Investigations conducted at the request of the Commissioner.

B. Investigative Responsibility: The following criteria will be considered by the Director, Bureau of Professional Responsibility, in determining if the Internal Affairs Division will assume investigative responsibility or if the investigation will be assigned to Troop/Division personnel:

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1. Seriousness or complexity of the allegation to be investigated.
  2. Source of the complaint.
  3. Number of personnel involved.
  4. Duty assignment of personnel involved.
  5. Geographical limitations.
  6. Need for internal security relative to all or part of the investigation.
  7. Any exceptional circumstance noted by or brought to the attention of the Director, Bureau of Professional Responsibility.
- C. Performance Inadequacies: The Internal Affairs Division will not assume investigative responsibility for mere performance inadequacies or procedural discrepancy violations unless they are indicative of a more serious underlying problem. Addressing the preceding issues is a function of first line supervision and should be handled at that level through counseling, training or other remedial action.
- D. Complaints Initiated by Personnel: The Use of Force or Complaint Reception and Processing Worksheet shall be completed in accordance with Section 25.10 B. of this regulation. No investigation will be undertaken into complaints lodged by personnel unless a substantiation of the allegation would give rise to formal discipline.
- E. Investigatory Difficulties: If in the course of monitoring an ongoing investigation, the Director, Bureau of Professional Responsibility, determines that investigatory difficulties exist, the Internal Affairs Division may be directed to assume full or partial responsibility for conducting that specific investigation. This may occur at any stage of the investigation.

#### 25.10 COMPLAINT PROCESSING

- A. Types of Complaints: Complaints may be received in any of the following manners and shall be processed in accordance with this regulation in all instances:

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1. Telephone: Self-explanatory.
2. In Person: Individuals may appear at a Department installation, or may make a complaint to personnel at any location.
3. Correspondence: Self-explanatory.

B. Receiving Complaints:

1. Every complaint, whether anonymous, verbal or written, received by personnel shall be recorded on the Use of Force or Complaint Reception and Processing Worksheet, and processed as described in Appendage I. When the complaint involves personnel in the chain of command and the process described in Appendage I is inappropriate, contact may be made directly with the Internal Affairs Division.
2. Complainants shall not be required to appear at a Department installation to initiate a complaint.
3. Complainants may remain anonymous; however, a reasonable effort to obtain identification should be made.
4. If their identity is known, complainants shall be advised that a Department representative will contact them.
5. The following procedure shall be followed by personnel receiving a complaint at times other than normal working hours:
  - a. In those cases which are not of a serious nature and do not require an immediate response from an Internal Affairs Division investigator, the information shall be documented and processed in accordance with Appendage I.
  - b. In serious cases which warrant the immediate response of an Internal Affairs Division investigator, personnel receiving the complaint shall immediately notify, through channels, the Troop Officer of the Day (OD). The Troop OD shall then contact the Department Headquarters

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OD, who shall provide the name of the appropriate Bureau of Professional Responsibility duty member to call for an evaluation of the necessity of an immediate response. Any incident which results in the death or serious injury of a person; that involves the physical arrest of personnel, or major breaches of conduct by personnel; or that is likely to generate more than routine public interest, should be considered serious in nature.

C. Notifying Involved Individuals:

1. The Director, Bureau of Professional Responsibility, shall notify the complainant that their complaint has been received. When personnel initiate a complaint, this notification may not be required. (Refer to Appendage III.)
2. The assigned investigator shall officially notify affected personnel of a pending investigation, unless circumstances dictate otherwise. The Notification of Inquiry shall be issued to the subject(s) and serve as the official notification. (Refer to Appendage IV.)

D. Investigation Procedures: The following procedures shall be followed by individuals conducting personnel investigations:

1. Complaints of physical abuse, discrimination and sexual harassment provide a high potential for liability to the Department and its personnel. Based upon a request from the Office of Chief Counsel, all such complaints shall be investigated immediately to determine the factual circumstances surrounding the complaint in order to assist the Office of Chief Counsel in developing legal theories that can be advanced in defense of any resulting claims and to properly evaluate the potential for liability to which the Department or its members could be exposed. The Office of Chief Counsel shall be provided notice of complaints of this nature by the Director, Internal Affairs Division as soon as possible after receipt.

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2. The Use of Force or Complaint Reception and Processing Worksheet shall be prepared in accordance with this regulation and will serve in place of an incident memo. A BPR Control Number shall be obtained by the Troop Commander/Division Director and entered in Block 1. No incident memo will be prepared, nor will a Troop Incident Number be assigned.
3. Complaints from citizens shall be verified through the completion of the Complaint Verification, Form SP 1-108, Appendage XII. In some cases this would have been accomplished through the use of Appendage XIII by the Bureau of Professional Responsibility by mail prior to assignment. If the verification is not attached to the complaint the investigator shall complete Appendage XII. In doing so, investigators shall request the complainant's signature in the allotted block before the interview.
  - a. If the complainant refuses to sign the form, the investigator shall print "Refused" in the signature block. The complainant shall be informed that such refusal constitutes a withdrawal of their complaint. The investigator shall attempt to complete an interview of the complainant, and shall afterwards confer with the Director, Bureau of Professional Responsibility for a determination on the future course of the investigation. Except in cases of criminal conduct or those which could give rise to court-martial proceedings, as determined by the Department Disciplinary Officer, the investigation shall be terminated with the submission of a limited investigation documenting action taken.
  - b. If travel distance or other circumstances prohibit a personal interview, the investigator shall request assistance from the Bureau of Professional Responsibility in obtaining a completed verification form.

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4. The General Investigation Report shall be used to report full investigations. Correspondence shall be used to report limited investigations.

NOTE: When appropriate, an Initial Crime Report, Form SP 7-004, or Non-Traffic Citation, Form SP 7-0017B shall be prepared and assigned a Troop Incident Number.

5. Personal contact, when practical, shall be made with complainants, witnesses and involved personnel. Anonymous complaints shall not be automatically dismissed. A thorough investigation shall be conducted to independently prove or disprove the allegation. The investigator should make a reasonable effort to determine the identity of anonymous complainants.

NOTE: No administrative action shall be taken against personnel solely on the basis of an unsupported anonymous complaint. In addition, no investigation shall be initiated into anonymous complaints unless a substantiation of the allegation could give rise to formal discipline as determined by the Disciplinary Officer.

6. Personnel who are directly or indirectly associated with a matter under investigation may be directed by the investigating officer or other authority to submit correspondence containing an account of their knowledge and involvement. Such correspondence shall include complete answers to any related questions of the investigator. Absent exigent circumstances, personnel shall be provided 48 hours to submit the correspondence to the investigator or higher authority. Any subsequent requests for additional information may be made by the investigator citing specific questions to be answered. All submitted correspondence shall be included as attachments to the General Investigation Report.

7. The subject of the investigation shall be personally interviewed.

- a. All related interviews conducted during BPR personnel investigations which allege criminal conduct or

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gross misconduct shall be  
tape-recorded.

- (1) Prior to beginning an interview which requires tape-recording, the subject shall be informed that their statement will be tape-recorded.
  - (2) Personnel, during administrative investigations, have no right to refuse the interview being tape-recorded.
  - (3) Individuals not employed by the Department have the right to refuse their interview being tape-recorded.
- b. The subject(s) of a taped interview may obtain a copy of the related cassette tape.

- (1) Upon written request to the Director, Bureau of Professional Responsibility, and within 15 working days after the last interview is completed, the subject(s) shall be provided with a copy of their taped interview. Requesting personnel shall immediately provide correspondence encompassing a written receipt. For other than Department personnel, a handwritten receipt is acceptable.
- (2) The subject(s), who is a PSTA member, may simultaneously tape-record the interview being conducted and also be tape-recorded by a member conducting a BPR investigation. At the conclusion of the interview, the subject's cassette tape shall be removed and immediately placed in an envelope by the BPR investigator. The envelope shall then be sealed and the subject directed to place their

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signature, date and time upon the seal. The sealed envelope shall be further enveloped in a postage stamped and addressed mailing envelope provided by the member. The package shall be immediately mailed to the PSTA office where the enclosed envelope will be retained in a sealed condition until notified by BPR that the contents of the interview may be released to the subject(s).

- c. Interviews meeting the criteria set forth in this regulation for tape-recording which have not, for whatever reason, been tape-recorded will be reduced to writing by the investigator, who shall then show the written statement to the subject for their review. The subject will then be requested to sign each page and complete the signature block on the statement's last page. The signature block shall state:

By my signature on this and each of the foregoing \_\_\_\_\_ pages, I hereby adopt the statement contained herein and acknowledge the statement's completeness and veracity.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

- d. Tape-recorded interviews may be summarized for reporting purposes. The investigator must ensure that the summary is accurate and that the original tape is included as an attachment to the investigative report.
8. All documents and/or reports, or copies thereof, if originals are not available, which have been generated by the investigation shall be collected.

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9. All available investigative tools shall be employed to secure evidence to assist in determining the facts of an investigation. All evidence collected shall be processed in accordance with the procedures outlined in OM 7-7. Examples of investigative tools and evidence to be used in the investigation are as follows:

a. Documents and Records:

- (1) Medical reports - refer to Appendage V.
- (2) Licenses, registrations or any applications.
- (3) Telephone toll records.
- (4) Financial records - refer to Appendage VI.
- (5) Credit Bureau checks.
- (6) Search warrants/affidavits.
- (7) Employment records - refer to Appendage VII.
- (8) Subpoenas.
- (9) Initial Crime Reports.
- (10) Accident Reports.

NOTE: A Request for Criminal Record Check, Form SP 4-164, commonly referred to as a "rap sheet," shall only be included if relevant.

b. Clothing: Especially important in incidents of shooting or alleged physical abuse.

c. Photographs:

- (1) Victims - physical abuse, shootings, etc.
- (2) Scenes - location of alleged violation.

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- (3) Photo lineups - U.S. v. Wade covers the Supreme Court guidelines associated with lineups. Refer to Appendage XI.
- d. Radio Tapes: These are reused on a 30 or 60-day cycle. It is incumbent upon the investigator to obtain the tape prior to its reuse or erasure.
- e. Sketches: Prepared of scene, if warranted.
- f. Weapons: Ascertain if:
  - (1) Issued/personal.
  - (2) Ammunition - issued/personal.
  - (3) Alterations.
  - (4) Make, model, serial number and caliber.
  - (5) Qualified with weapon - Permanent Firearms Scoring Record, Form SP 8-104.
  - (6) Request to Carry a Personal Handgun on Duty, Form SP 1-600, is completed and on file.
- g. Technical Aids:
  - (1) Laboratory.
    - (a) Ballistics Section.
    - (b) Chemistry Section.
    - (c) Documents Section.
    - (d) Photographic Section.
    - (e) Latent Print Section.
    - (f) Automated Fingerprint Identification System Section.
  - (2) Polygraph.

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(3) Helicopter.

(4) Scuba Teams.

10. Personal property of personnel is not subject to search and seizure for administrative work-related investigations without reasonable suspicion. Probable cause and/or a search warrant, as required by law, are necessary to search and seize the personal property for criminal investigative purposes. However, Department property may be searched at any time, even if assigned to or used exclusively by a single individual. This search may be conducted by any authorized person pursuant to an investigation.
11. At no time will recommendations be offered as to the appropriate administrative action to be taken. The investigator shall not express assumptions, personal opinion, or conclusions in the General Investigation Report.
12. The following exceptions to completing a General Investigation Report are necessary when conducting full investigations:
  - a. Block 5 shall read as follows:

Name of Subject Personnel  
Troop/Bureau - Station/Division  
Date of Enlistment/Hiring  
Social Security Number of Subject Personnel

NOTE: Additional subjects shall be entered in the INSTRUCTIONS Block, under the subheading ADDITIONAL SUBJECTS, using the above format.
  - b. The subheadings CONCLUSION, and RECOMMENDATION and COMMENT in Block 6 shall not be included when the report is used for administrative investigation purposes.
  - c. All attachments shall be consecutively numbered under the subheading, LIST OF ATTACHMENTS. Each attachment shall be numbered, along the lower right corner to correspond with this list. In the format of: Attachment No. \_\_\_\_\_,

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Page \_\_\_\_ of \_\_\_\_ . The Use of Force or Complaint Reception and Processing Worksheet shall always be Attachment Number 1. Attachments to supplemental General Investigation Reports shall continue consecutively from the last attachment number in the original report.

- d. No references to race/ethnicity shall be included when identifying interviewees, unless relevant to the issue under investigation.
  - 13. When the facts of an investigation indicate that a Report of Incident/Accident, Form STD-430, shall be submitted according to AR 4-12, it shall be submitted directly to the Director, Bureau of Staff Services, and noted in the details section of the report. A copy shall not be made an attachment to the General Investigation Report.
  - 14. Department directives, contract/agreement provisions, the Pennsylvania Rules of Criminal Procedure and statutes shall be strictly adhered to while conducting investigation(s).
  - 15. Individuals under investigation shall be advised of their Constitutional Rights, which may apply during the investigation.
  - 16. The investigation shall be completed and all reports shall be received by the Director, Bureau of Professional Responsibility within 30 days after assignment, unless another time period is specified by the Director. It is important for the assigned investigator to complete the investigation and submit the report promptly.
- E. Investigation of Non-Complaint Incidents:
- 1. Incidents involving legal intervention, shooting or use of physical force, provide a high potential for liability to the Department and its personnel. Based on a request from the Office of Chief Counsel, in all such incidents an immediate investigation shall be conducted into the factual circumstances surrounding the incident in order to assist the Office of Chief Counsel in developing legal theories that can be advanced in defense

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of any resulting claims and to properly evaluate the potential for liability to which the Department or its members could be exposed. The Office of Chief Counsel shall be provided notice of the above-referenced types of incidents by the Director, Internal Affairs Division as soon as possible after their occurrence.

2. The involved member(s)/enforcement officer(s) shall immediately notify, through the chain of command, the Troop Commander responsible for the area in which the incident occurred. For a member not under their command, the Troop Commander shall notify the member's Troop Commander, Division Director; and, if on detached status, the member's current Troop Commander/Division Director shall also be notified. For Enforcement Officers, the Troop Commander shall notify the Director, Operations Division, Bureau of Liquor Control Enforcement. If serious injury or death occurred to an individual, the Troop Commander shall immediately notify the Deputy Commissioner of Operations, through the chain of command, if possible. The Troop Commander shall also provide immediate notification to the Bureau of Professional Responsibility, in accordance with Department directives, in all shooting/physical force incidents.
3. In those incidents requiring immediate response, the Troop Commander shall ensure that a supervisor who is not directly involved in the incident is immediately assigned to secure the scene of the incident. The assigned supervisor shall initiate a preliminary investigation, pending assignment of a principal investigator, who shall be selected through concurrence with the Director, Bureau of Professional Responsibility.
4. If the use of physical force results in injury which requires medical treatment to personnel only, and no other investigative criteria applies, an administrative investigation is not required.
5. Any member/enforcement officer, who discharges a weapon which results in an injury or death, or whose use of physical force results in a death, shall immediately be assigned to

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Station/Office duties, pending an evaluation of the circumstances surrounding the incident by the Deputy Commissioner of Administration. In addition, any member/enforcement officer whose use of physical force results in an injury may, at the discretion of the Deputy Commissioner of Administration, be assigned to Station/Office duties pending evaluation of the circumstances surrounding the incident. For those incidents in which responsibility cannot be immediately determined, all members/enforcement officers directly involved in the incident shall be placed in this status, where appropriate. This action is not to be construed as disciplinary in nature.

6. Whenever a member/enforcement officer is directly involved in a shooting incident which results in injury or death:
  - a. The assigned criminal investigator and BPR investigator shall interview the involved personnel, as soon as possible.
  - b. The Troop Commander/Bureau Director shall ensure that the Member Assistance Program Office Manager is notified immediately.
  - c. The member's/enforcement officer's Troop Commander/Bureau Director, in conjunction with the Manager, Member Assistance Program, shall, as soon as possible, but not more than 72 hours after the incident, arrange for the affected member(s)/enforcement officer(s) to receive appropriate professional counseling. This shall not preclude professional counseling of members/enforcement officers involved in shooting incidents not resulting in injury or death or in other use of physical force incidents. In addition, the Troop Commander/Bureau Director, in conjunction with the Manager, Member Assistance Program, shall ensure appropriate professional counseling is provided to any personnel, e.g., Police Communications Operators, supervisors, etc., indirectly

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involved with and adversely affected by an incident.

- d. The Troop Commander/Bureau Director shall ensure the PSTA President is notified, as soon as possible in those incidents involving members.
- 7. During the investigation of a shooting incident, it may be necessary for the investigator to take possession of a member's/enforcement officer's weapon. The Troop Commander/Division Director shall make arrangements for immediate replacement of the weapon.
- 8. Release of a member's/enforcement officer's name to the news media shall be coordinated through the Public Information Office.
- 9. An investigation of a non-complaint incident is not required for the following shooting incidents:
  - a. Firearms training/qualification.
  - b. A member/enforcement officer discharging a weapon while off duty as permitted by law for purposes such as hunting, fishing, target shooting, etc.
  - c. When a member destroys an animal in accordance with the provisions of FR 7-3.
- 10. During the investigation of a non-complaint incident, the investigator shall exercise discretion in determining if an aggrieved citizen should be interviewed. This does not apply to instances where the citizen initiates the complaint and alleges physical abuse.

F. Limited Investigations:

- 1. A limited investigation may be conducted when a requirement under the definition of "Limited Investigation" is met. In addition, a limited investigation may be conducted when the Troop Commander/Division Director and the Director, Bureau of Professional Responsibility concur that a full investigation is not warranted due to mitigating circumstances. A BPR Control

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Number and investigator shall be assigned to all limited investigations.

2. Limited investigations shall be prepared on correspondence directed to the investigator's Troop Commander/Bureau Director.

- a. Limited investigations should include a synopsis of the allegations. Enclosures may include:

- (1) Information from involved personnel submitted correspondence.

- (2) Copies of pertinent investigative reports.

- (3) Any other documents which are relevant to the investigation.

- (4) Notification of Inquiry issued to involved personnel.

- b. Investigator's assessment as to why this investigation should be handled on a limited basis, as defined in Section 25.04 I.

3. Upon completion of a limited investigation, the Troop Commander/Division Director shall prepare an endorsement, citing reasons for their decision and a notation that the complainant and involved personnel were notified of this decision. The endorsement shall also include a statement of the disposition using one of the defined categories listed in Section 25.07, excluding the categories "Sustained" or "Not-Sustained." The limited investigation must be converted into a full investigation if any element of misconduct is determined.

4. Troop Commanders/Division Directors shall forward the endorsed, limited investigation, through channels, to the Director, Bureau of Professional Responsibility. If, during the review process, a determination is made that the facts contained in the limited investigation are insufficient to support the final disposition, the report may be returned to the Troop Commander/Division Director

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directing that the investigator conduct a full investigation. If a limited investigation is returned under these circumstances, all prior notifications to the complainant and involved personnel shall be deemed to be void.

G. Submission of Internal Investigation Reports for Full Investigations:

1. All applicable General Investigation Reports shall be forwarded directly, in duplicate, to the Director, Bureau of Professional Responsibility, by the assigned investigator.
2. After reviewing the report for investigative content, the Director, Bureau of Professional Responsibility, shall either forward it to the Deputy Commissioner of Administration for further processing or return it to the investigator for additional investigation. A copy of the investigative reports on incidents involving legal intervention, shooting, use of physical force, or complaints of physical abuse, discrimination, or sexual harassment shall be forwarded to the Office of Chief Counsel for evaluation at the time the report is forwarded to the Deputy Commissioner of Administration.
3. The Deputy Commissioner of Administration or designee shall forward the investigative report to the appropriate Area Commander/Bureau Director, who shall review and forward it to the Troop Commander/Division Director. In cases which appear to warrant the issuance of a DAR, the Area Commander/Bureau Director shall ensure consultation with the Troop Commander/Division Director prior to an administrative decision being made. An administrative decision shall be formulated by the Troop Commander/Division Director and communicated to the subject(s) of the investigation in a timely manner.
  - a. If the investigation involves a member and a DAR will be issued, the provisions of FR 3-3 apply.
  - b. If disciplinary action will be taken against an employee, the provisions of AR 4-9 apply.

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4. The investigative report shall be returned, through channels, to the Deputy Commissioner of Administration, by the appropriate Troop Commander/Division Director, after they have completed their supplement report of the General Investigation Report and detailed their administrative decision. The supplement report shall, at a minimum, contain the following:
  - a. A statement of the disposition using one of the defined categories listed in Section 25.07. If there is more than one element to the allegation and the dispositions differ, each element must be individually addressed. Allegations in the categories Verbal Abuse or Dissatisfaction with Performance of Duty that are disposed of as unfounded or not sustained may be satisfactorily addressed by simply stating the appropriate disposition with no explanation necessary.
  - b. Except as exempted in the above section, a statement on those mitigating or aggravating circumstances that influenced the dispositional decision.
  - c. A statement that notification regarding the disposition of the complaint was made to the subject and the complainant. The method used to notify the complainant must be stated.
  - d. When a DAR is issued, the detailed summary provided to the involved member shall be included as an attachment.
5. The Deputy Commissioner of Administration shall forward all reports to the Director, Bureau of Professional Responsibility, for further action or filing.
6. The central location for the collection and maintenance of all administrative investigation information shall be the Bureau of Professional Responsibility, Internal Affairs Division. All personnel investigations are of

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a confidential nature and may be reviewed only upon authorization of the Commissioner/designee.

7. General Investigation Reports and limited investigation reports shall be purged after ten years, or two years after the member/employee separates, unless litigation warrants retention.

#### 25.11 INTERNAL AFFAIRS DIVISION PERSONNEL

A. Selection: Staffing an Internal Affairs Division is an important factor in the success or failure of the Division. To be considered for assignment in the Internal Affairs Division, members must:

1. Be volunteers.
2. Have demonstrated that they possess a high degree of investigative skill and the ability to write clear, concise and complete investigative reports.
3. Have an excellent reputation, among both their peers and supervisors, in terms of integrity and overall performance as members.
4. Be familiar with those statutes, collective bargaining agreements, and Department directives, policies and procedures which are related to administrative investigations.
5. Have a thorough knowledge in the collection and preservation of evidence.
6. Should have knowledge of the availability of records and information maintained by other sources and agencies.
7. Should possess the ability to perform photographic surveillance and possess or be willing to acquire the proper certification required to perform electronic surveillance.
8. Should be in good physical condition and present a professional appearance.
9. Should be able to interact effectively with people and be proficient in interviewing and interrogation techniques.

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- B. Tenure: It is a generally accepted practice to periodically rotate members assigned to an Internal Affairs Division. This rotation process will assure the infusion of new personnel and new ideas, and allow greater member participation. The investigator positions within the Division shall be posted in accordance with AR 4-20. Investigators shall serve for a period of time to be determined by the Commissioner.

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APPENDAGE I

USE OF FORCE OR COMPLAINT RECEPTION AND PROCESSING WORKSHEET  
FORM SP 1-101

- A. PURPOSE: This form is used to provide a uniform method of receiving and recording complaints against personnel and recording incidents for non-complaint investigations.
- B. PREPARATION: This form shall be printed with ballpoint pen or typewritten, in original only, by the individual receiving the complaint.
- C. BLOCK INSTRUCTIONS:
1. BPR CONTROL NUMBER: To be obtained by the Troop Commander/Division Director from the Director, Bureau of Professional Responsibility.
  2. COMPLAINANT INFORMATION: This section is for recording the vital information regarding the individual making the complaint. Personnel shall not place their names in this section unless they are the actual complainant. When personnel receive information from an outside source, that source shall be noted in this section. For non-complaint investigations and anonymous complaints, this section shall be left blank.
  3. NON-COMPLAINT USE OF FORCE REPORT: Check the appropriate box.
  4. SUBJECT OF ALLEGATION/REPORT: Self-explanatory.
  5. DETAILS OF ALLEGATION:
    - a. ROUTE/STREET: Self-explanatory.
    - b. CITY/TWP/BORO: Self-explanatory.
    - c. COUNTY: Self-explanatory.
    - d. DATE: Self-explanatory.
    - e. TIME: Self-explanatory.
    - f. DAY: Self-explanatory.
    - g. TYPE OF ALLEGATION: Refer to Section 25.05. Check the appropriate box.

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- (2) If the decision is made for the investigation to be conducted by a member of the Internal Affairs Division, the Worksheet shall be immediately forwarded to the Director, Bureau of Professional Responsibility. It will then be forwarded to the Internal Affairs Division investigator for attachment to the General Investigation Report.
- b. Upon receipt of a nonwritten complaint which alleges dissatisfaction with performance of duty or verbal abuse, the Troop Commander/Division Director shall immediately contact the Director, Bureau of Professional Responsibility to discuss the details of the allegation. When appropriate, the Director, Bureau of Professional Responsibility may elect to proceed by forwarding a Complaint Verification, Form SP 1-108, to the complainant requesting more specific information about the allegation, before initiating an investigation. In such cases, the Troop Commander/Division Director shall forward the original Worksheet to the Bureau of Professional Responsibility and retain a copy in a chronological file at the Troop/Bureau for 60 days, after which the Worksheet shall be purged.
- c. The original Worksheet shall be retained in an active file at the Bureau of Professional Responsibility for 30 days, following the mailing of the Complaint Verification Form. Failure of the complainant to complete and return the Complaint Verification Form within 30 days will result in termination of the complaint and transfer of the original Worksheet to an inactive file. Completed Complaint Verification Forms shall be evaluated by the Director, Bureau of Professional Responsibility to determine if an investigation is warranted.
3. It may be determined by the Director, Bureau of Professional Responsibility that action other than an investigation is appropriate; in such cases the Worksheet shall be forwarded to the Director, Bureau of Professional Responsibility with related cover correspondence.

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E. DISTRIBUTION WHEN A COMPLAINT IS RECEIVED BY THE BUREAU OF PROFESSIONAL RESPONSIBILITY:

1. When it is determined that the investigation shall be conducted by a member of the Internal Affairs Division, the Worksheet shall be prepared and forwarded to the assigned Internal Affairs Division investigator for attachment to the General Investigation Report.
2. When it is determined that the investigation shall be conducted by Troop/Bureau members, the Worksheet shall be prepared and forwarded to the Troop Commander/Division Director of the affected personnel. The assigned investigator shall attach it to the General Investigation Report.

F. DISTRIBUTION WHEN THE SUBJECT OF THE COMPLAINT IS A MEMBER ASSIGNED TO THE BUREAU OF PROFESSIONAL RESPONSIBILITY: When a complaint is received concerning a member assigned to the Bureau of Professional Responsibility, the Worksheet shall be sent directly, under confidential cover, to the Deputy Commissioner of Administration.

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PENNSYLVANIA STATE POLICE  
**USE OF FORCE OR COMPLAINT  
 RECEPTION AND PROCESSING WORKSHEET**

BPR CONTROL NUMBER

1. AR 4-25  
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**COMPLAINANT INFORMATION**

<b>NAME</b>	FIRST	M.I.	LAST	
<b>HOME ADDRESS</b>	STREET/P.O. BOX			
	CITY	STATE	ZIP CODE	HOME PHONE # ( )
<b>EMPLOYER</b>	NAME & ADDRESS			WORK PHONE # ( )

2. <b>NON-COMPLAINT USE OF FORCE REPORT</b>	<input type="checkbox"/> SHOOTING INCIDENT	<input type="checkbox"/> PHYSICAL FORCE	<input type="checkbox"/> LEGAL INTERVENTION
---	--	---	---

4. <b>SUBJECT OF ALLEGATION/REPORT (List additional subjects on back)</b>				
<b>NAME</b>	FIRST	M.I.	LAST	
<b>LOCATION</b>	TROOP/BUREAU	STATION/DIVISION		JOB ASSIGNMENT
	SSN	DOE	← TO BE COMPLETED IF KNOWN OR AVAILABLE	

5. <b>DETAILS OF ALLEGATION</b>				
ROUTE/STREET				
CITY/TWP/BORO		COUNTY	DATE	TIME DAY
<b>TYPE OF ALLEGATION (CHECK ONE)</b>	<input type="checkbox"/> PHYSICAL ABUSE <input type="checkbox"/> VERBAL ABUSE <input type="checkbox"/> CRIMINAL CONDUCT			
	<input type="checkbox"/> IMPROPER CONDUCT ON DUTY <input type="checkbox"/> IMPROPER CONDUCT OFF DUTY <input type="checkbox"/> DISSATISFACTION WITH PERFORMANCE OF DUTY			
<input type="checkbox"/> OTHER (Please explain)				
<b>SYNOPSIS</b>				

6. <b>RECEPTION DATA</b>				
DATE RECEIVED	TIME RECEIVED	LOCATION RECEIVED	TROOP/BUREAU	STATION/DIVISION
RECEIVED BY	NAME	SSN		

7. <b>FOR BUREAU USE</b>				
INVESTIGATOR	NAME	SSN		
CONTROL NO. ISSUED BY	DATE ASSIGNED	DATE DUE	SP 1-101-A	LIMITED INVESTIGATION
			<input type="checkbox"/>	<input type="checkbox"/>



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## APPENDAGE II

### REVIEW OF PERFORMANCE COMPLAINT SP 1-101A

- A. PURPOSE: The review of performance complaint is used to:
1. Provide Troop Commanders/Division Directors with a guideline to assist in determining if a member is merely lacking in a performance outside the Department Internal Affairs/Discipline System.
  2. Document action taken in cases of performance inadequacies for future reference in the event of repeated behavior; a basis for progressive discipline; to document/maintain consistency throughout the Department.
- B. BLOCK INSTRUCTIONS: This form shall be printed with ballpoint pen or typewritten, in original only, by the Troop Commander/Division Director reviewing the complaint.
1. SUBJECT AND BPR NUMBER: Self-explanatory.
  2. DATE(S) OCCURRED: Self-explanatory.
  3. DID COMMISSION/OMISSION TAKE PLACE OR BECOME KNOWN TO THE PUBLIC? Check appropriate box.
  4. WAS THE COMMISSION/OMISSION WHOLLY A MATTER OF INTERNAL ADMINISTRATION? Check appropriate box.
  5. WAS THE MEMBER PREVIOUSLY COUNSELED REGARDING SIMILAR BEHAVIOR? IF YES, LIST DATES, CIRCUMSTANCES, AND BY WHOM: This requires review of member's supervisory file and performance evaluation. Check appropriate box. If yes is checked, provide details.
  6. WHAT, IF ANY, EFFECT DID THE MEMBER'S COMMISSION/OMISSION HAVE (E.G. DESTROYED RESPECT FOR THE PENNSYLVANIA STATE POLICE, IMPROPER EXAMPLE FOR OTHERS, ETC.): Self-explanatory. If none, leave blank.
  7. LIST AND IDENTIFY AGGRAVATING AND/OR MITIGATING CIRCUMSTANCES: Self-explanatory.
  8. WAS MEMBER DISCIPLINED WITHIN THE PAST FIVE YEARS REGARDING SIMILAR PERFORMANCE? IF YES, LIST DATES AND PENALTIES: Self-explanatory.
  9. WAS MEMBER PREVIOUSLY GIVEN REMEDIAL TRAINING REGARDING SIMILAR PERFORMANCE? IF YES, LIST DATES AND CIRCUMSTANCES: Self-explanatory.

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10. PRE-ADJUDICATION MEETING WAS HELD? DATE: Self-explanatory. This is to verify whether the Troop Commander/Division Director met with the member for the purpose of determining the validity of a performance inadequacy.
11. ATTENDEES: List the names of any persons, in attendance with the member and their position. Example: Trooper John J. Jones - Troop PSTA Representative.
12. REMARKS: List any pertinent comments made by the parties during the meeting.
13. DETERMINATION: Check appropriate box.
14. DATE MEMBER WAS NOTIFIED OF DETERMINATION: Self-explanatory.
15. DATE COMPLAINANT WAS NOTIFIED OF DETERMINATION: Self-explanatory. Check appropriate box if notification was written or verbal.
16. DISCIPLINARY OFFICER CONTACTED? IF YES, LIST DATE: Self-explanatory.
17. MEMBER COUNSELED? IF YES, LIST DATE: Self-explanatory.
18. DAR/TROOP COMMANDER'S WRITTEN REPRIMAND ISSUED? IF YES, LIST DATE: Self-explanatory.
19. BPR INVESTIGATION INITIATED: Check appropriate box.
20. REMEDIAL TRAINING SCHEDULED? IF YES, LIST DATE(S) AND TYPE: Self-explanatory.
21. REMARKS/DETAILS: Self-explanatory.
22. INITIATING OFFICER, TITLE AND DATE: Self-explanatory.

C. DISTRIBUTION:

1. If a performance inadequacy is founded, the Troop Commander/Division Director shall be responsible for ensuring the preparation and submission of the Review of Performance Complaint. This report shall be appended to the Use of Force or Complaint Reception and Processing Worksheet, Form SP 1-101, and forwarded to the Bureau of Professional Responsibility.
2. The Troop Commander/Division Director shall retain a copy of this report in a supervisory file established for that purpose.

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SP 1-101A (B-93)	<b>REVIEW OF PERFORMANCE COMPLAINT</b>	
1. SUBJECT <span style="float: right;">BPR #</span>		
2. (S) OCCURRED:		
3. DID COMMISSION/OMISSION TAKE PLACE OR BECOME KNOWN TO THE PUBLIC? <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span>		
4. WAS THE COMMISSION/OMISSION WHOLLY A MATTER OF INTERNAL ADMINISTRATION? <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span>		
5. WAS THE MEMBER PREVIOUSLY COUNSELED REGARDING SIMILAR BEHAVIOR? IF YES LIST DATES, CIRCUMSTANCES AND BY WHOM: <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span>		
6. WHAT, IF ANY, EFFECT DID THE MEMBER'S COMMISSION/OMISSION HAVE (E.G. DESTROYED RESPECT FOR THE PENNSYLVANIA STATE POLICE, IMPROPER EXAMPLE FOR OTHERS, ETC.):		
7. LIST AND IDENTIFY AGGRAVATING AND/OR MITIGATING CIRCUMSTANCES:		
8. WAS MEMBER DISCIPLINED WITHIN THE PAST FIVE YEARS REGARDING SIMILAR PERFORMANCE? IF YES, LIST DATES AND PENALTIES: <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span>		
9. WAS MEMBER PREVIOUSLY GIVEN REMEDIAL TRAINING REGARDING SIMILAR PERFORMANCE? IF YES, LIST DATES AND CIRCUMSTANCES: <span style="float: right;"><input type="checkbox"/> YES <input type="checkbox"/> NO</span>		
<b>ADJUDICATION OF PERFORMANCE COMPLAINT</b>		
10. PRE-ADJUDICATION MEETING WAS HELD?	DATE:	<input type="checkbox"/> YES <input type="checkbox"/> NO
11. ATTENDEES:		
12. REMARKS:		
DETERMINATION: <span style="float: right;"><input type="checkbox"/> UNFOUNDED <input type="checkbox"/> SUSTAINED <input type="checkbox"/> NOT SUSTAINED</span>		
DATE MEMBER WAS NOTIFIED OF DETERMINATION:		
15. DATE COMPLAINANT WAS NOTIFIED OF DETERMINATION: <span style="float: right;"><input type="checkbox"/> WRITTEN <input type="checkbox"/> VERBAL</span>		

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## ACTION TAKEN

16. DISCIPLINARY OFFICER CONTACTED? IF YES, LIST DATE:

☐ YES ☐ NO

17. MEMBER COUNSELED? IF YES, LIST DATE:

☐ YES ☐ NO

18. DAI/TROOP COMMANDER'S WRITTEN REPRIMAND ISSUED? IF YES, LIST DATE:

☐ YES ☐ NO

19. BPR INVESTIGATION INITIATED?

☐ YES ☐ NO

20. REMEDIAL TRAINING SCHEDULED? IF YES, LIST DATE (S) AND TYPE:

☐ YES ☐ NO

21. REMARKS/DETAILS

22. INITIATING OFFICER

TITLE

DATE

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APPENDAGE III

Dear:

This will acknowledge receipt of the complaint which you filed with this agency.

You will be contacted by a Department representative in the near future. Any questions you may have concerning your complaint should be directed to the Bureau of Professional Responsibility at (717) 783-5145.

Very truly yours,

Director  
Bureau of Professional Responsibility

AR 4-25

## APPENDAGE IV

SP 1-182 (8-93)

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COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE  
NOTIFICATION OF INQUIRY

NOTE: INVESTIGATORS SHALL PREPARE ORIGINAL AND ONE COPY, RETAIN THE ORIGINAL WITH CASE FILE AND PROVIDE COPY TO THE SUBJECT OF INVESTIGATION. ONE OF THE THREE LISTED INVESTIGATION TYPES SHALL BE CHECKED.

BPR

RANK

NAME

TROOP/STATION

## YOU ARE HEREBY NOTIFIED OF THE FOLLOWING:

- ☐ A COMPLAINT INVESTIGATION IS BEING CONDUCTED INTO AN INCIDENT IN WHICH YOU ARE ALLEGED TO HAVE BEEN INVOLVED. THE DETAILS OF THE COMPLAINT ARE AS FOLLOWS: (EXPLANATION BELOW)
- ☐ A NON-COMPLAINT INVESTIGATION IS BEING CONDUCTED IN ACCORDANCE WITH DEPARTMENT DIRECTIVES. THE DETAILS OF YOUR INVOLVEMENT ARE AS FOLLOWS: (EXPLANATION BELOW)
- ☐ AN ADMINISTRATIVE INVESTIGATION IS BEING CONDUCTED PURSUANT TO A REQUEST FROM THE OFFICE OF CHIEF COUNSEL. YOUR INVOLVEMENT HAS BEEN IDENTIFIED AS FOLLOWS:

SIGNATURE OF INVESTIGATOR

I ACKNOWLEDGE RECEIPT OF THIS NOTIFICATION AND I AM AWARE OF MY RIGHT TO UNION REPRESENTATION.

SIGNATURE

BADGE I.D. NO.

SOCIAL SECURITY NO.

DATE

TIME

SP 1-108 (8-88)

APPENDAGE V

AR 4-25  
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COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE  
AUTHORIZATION TO OBTAIN MEDICAL INFORMATION

I, \_\_\_\_\_, do hereby, voluntarily and without promises or threats of any kind, authorize \_\_\_\_\_, of the Pennsylvania State Police to obtain information from all medical authorities, hospitals, clinics, or physicians who possess any and all records concerning my medical examinations, treatments, and/or hospital/clinic admissions relative to the examination and/or treatment of \_\_\_\_\_.

I further understand that the information obtained is to be used for internal, administrative purposes only and will not be used as evidence against me in any criminal proceeding.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
PRESENT STREET ADDRESS

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
CITY

\_\_\_\_\_  
STATE

\_\_\_\_\_  
ZIP CODE

\_\_\_\_\_  
DATE OF BIRTH

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TIME

SP 1-100 (9-86)

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APPENDAGE VI

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE  
AUTHORIZATION TO OBTAIN FINANCIAL INFORMATION

I, \_\_\_\_\_, do hereby, voluntarily and without promises or threats of any kind, authorize \_\_\_\_\_ of the Pennsylvania State Police to obtain and examine my financial records held by any financial institution that possess such records.

I further understand that the information obtained is to be used for internal, administrative purposes only and may not be used as evidence against me in any criminal proceeding.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
PRESENT STREET ADDRESS

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
CITY

\_\_\_\_\_  
STATE

\_\_\_\_\_  
ZIP CODE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TIME

APPENDAGE VII

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COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE  
AUTHORIZATION TO OBTAIN EMPLOYMENT RECORDS

I, \_\_\_\_\_, do hereby, voluntarily and without promises or threats of any kind, authorize \_\_\_\_\_ of the Pennsylvania State Police to obtain and examine all records held by my previous employer(s) concerning my employment history and job performance.

I further understand that the information obtained is to be used for internal, administrative purposes only and will not be used against me as evidence in any criminal proceeding.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
PRESENT STREET ADDRESS

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
CITY

\_\_\_\_\_  
STATE

\_\_\_\_\_  
ZIP CODE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TIME

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## APPENDAGE VIII

SP 1-104 (2-93)

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA STATE POLICE  
ADMINISTRATIVE WARNING

Member/Employe \_\_\_\_\_

Interviewer \_\_\_\_\_

BPR Control No. \_\_\_\_\_ Date \_\_\_\_\_

This questioning concerns administrative matters relating to the official business of the Pennsylvania State Police. I am not questioning you for the purpose of instituting a criminal prosecution against you, or for the purpose of securing additional evidence against you in any pending criminal action. During the course of this questioning, even if you disclose information which indicates you may be guilty of criminal conduct concerning this allegation, neither your self-incriminating statement nor its fruits will be used against you in a criminal proceeding.

Since this is an administrative matter within the Pennsylvania State Police, you are required to answer questions truthfully and completely or you may be subjected to administrative action. You do have the right to have a union representative with you during such questioning. If during the course of interview, you have reason to believe that your statements could result in administrative action being initiated against you, union representation will be provided upon request.

Do you understand what I have just explained to you? ☐ YES ☐ NO

Do you have any questions concerning what I have just explained to you? ☐ YES ☐ NO

SIGNATURE OF EMPLOYEE/MEMBER

DATE

SIGNATURE OF INTERVIEWER

DATE

## APPENDAGE IX

AR 4-25  
9/2/93PENNSYLVANIA STATE POLICE  
RIGHTS WARNING AND WAIVER NOTICE  
TO PENNSYLVANIA STATE POLICE PERSONNEL

TIME \_\_\_\_\_

DATE \_\_\_\_\_

PLACE \_\_\_\_\_

My name is \_\_\_\_\_ of the Pennsylvania State Police.  
 You have an absolute right to remain silent and anything you say can and will be used against you in a court of law. You also have the right to talk to an attorney before and have an attorney present with you during questioning. If you cannot afford to hire an attorney, one will be appointed to represent you without charge before any questioning, if you so desire. If you do decide to answer questions, you may stop any time you wish and you cannot be forced to continue. If you do exercise your right to remain silent, your refusal to answer will not be grounds for administrative action.

## WAIVER

I fully understand the statement warning me of my rights, and I am willing to answer questions. I do not want an attorney and I understand that I may stop answering questions anytime during the questioning. No promises have been made to me, nor have I been threatened in any manner. I also understand that my refusal to answer questions will not be grounds for administrative action.

\_\_\_\_\_  
SIGNATURE

WITNESS:

S' \_\_\_\_\_

S' \_\_\_\_\_

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APPENDAGE X

Garrity v. New Jersey, 87 S.Ct. 616, 385 U.S. 493, 17 L.Ed. 2d 562 (1967)

This case involved a situation where police officers who were being criminally investigated were given a choice to either incriminate themselves or forfeit their jobs under a state (New Jersey) statute dealing with forfeiture of office, tenure and pension rights by public employees who refuse to testify on grounds of self-incrimination. The officers chose to make confessions. However, the Supreme Court of the United States held the confessions were not voluntary, but were coerced. The court said that the option to lose their means of livelihood or to pay the penalty of self-incrimination is in direct contrast of free choice to speak out or to remain silent. That practice, the court said, is likely to exert such pressure upon an individual as to disable him from making a free and rationale choice. The protection of an individual under the Fourteenth Amendment against coerced statements prohibits the use of these statements, obtained under threat of removal from office, in subsequent criminal proceedings.

In summary, Garrity held that public employee statements that are induced by threat of dismissal or other discipline may not be used in a subsequent criminal prosecution.

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## APPENDAGE XI

U.S. v. Wade, 87 S. Ct. 1926, 388 U.S. 218, 18 L.Ed. 2d 1149 (1967)

The question addressed in this case was whether courtroom identifications of an accused at trial are to be excluded from evidence because the accused was exhibited to the witnesses before trial at a post indictment lineup conducted for identification purposes without notice to and in the absence of the accused's appointed counsel. The Supreme Court of the United States held that compelling the accused merely to exhibit his person for observation by a prosecution witness prior to trial involves no compulsion of the accused to give evidence, and was no violation of Wade's privilege against self-incrimination. However, the courtroom identification should have been excluded because the lineup was conducted without notice to and in the absence of counsel. The principle followed is that, in addition to counsel's presence at trial, the accused is guaranteed that he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial. The security of that right is as much the aid of the right to counsel as it is of the other guarantees of the Sixth Amendment.

In summary, Wade held that pretrial lineups constitute a critical step in the prosecutive process such that every individual has a right to counsel at such proceedings.

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## APPENDAGE XII

### COMPLAINT VERIFICATION FORM SP 1-108

- A. **PURPOSE:** The Complaint Verification provides a complainant with the opportunity to directly lodge a complaint with the Department in writing and on an official form. It also serves to formally involve a complainant as a party in our complaint process.
- B. **POLICY:** The form shall be used to verify citizen complaints that have not already been articulated in writing and properly signed by the complainant. The form may be used for other type complaints with the approval of the Director, Bureau of Professional Responsibility.
- C. **PREPARATION:** The verification form will only be employed by an investigator assigned a BPR investigation or of the Bureau of Professional Responsibility.
  - 1. Except as outlined in paragraph 2. below, the verification form shall be completed by the assigned investigator. The allegations shall be recorded from the complaint worksheet or from the complainant's present account. The form shall then be presented to the complainant for review and signing. A copy of the completed form may be mailed to the complainant by the investigator upon request. If travel distance or other circumstances preclude personal contact with a complainant, the investigator shall request that the verification form be sent by the Bureau of Professional Responsibility.
  - 2. The form will be mailed by the Bureau of Professional Responsibility to the complainant under the following circumstances:
    - a. When the Director, Bureau of Professional Responsibility determines that an investigation would most likely not be conducted if the complainant failed to return a completed verification form.
    - b. At other times, with the approval of the Director, Bureau of Professional Responsibility.

AR 4-25  
9/2/93

D. BLOCK INSTRUCTIONS:

1. NAME: Self-explanatory.
2. HOME ADDRESS: Self-explanatory.
3. REMARKS: The complainant's allegations will be detailed under remarks. When the form is completed by the investigator, the allegations may be recorded from the complaint worksheet or as related by the complainant.
4. SIGNATURE: Self-explanatory.
5. DATE: Self-explanatory.

AR 4-25  
9/2/93

\_\_\_\_\_

[illegible]

**I AFFIRM THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION OR BELIEF.**

**4. SIGNATURE**

5. DATE

AR 4-25  
9/2/93

APPENDAGE XIII

Dear:

The preliminary personnel complaint you filed with the Pennsylvania State Police has been referred to the Bureau of Professional Responsibility for processing. To initiate an investigation, you must complete and return the enclosed Complaint Verification Form within thirty (30) days. Failure to return the completed verification form signed and within thirty (30) days will result in the termination of your complaint.

When completing Block 3, "Remarks," consider the following issues: Where did the incident occur? Give a location to the best of your knowledge and ability. When did the incident take place? Note the date, day of week and time, if possible. Who was present when the incident happened? List names, addresses and telephone numbers, if known. What are the details of the incident? Begin with your initial contact and give a detailed account of the events surrounding your complaint. If the allegation is verbal abuse or rudeness, please state the specific term, phrase or language that you considered offensive. An allegation such as "poor attitude" is not definite enough to permit a determination as to any wrongdoing having occurred. Complaints that indicate displeasure with service rendered by State Police personnel should also indicate a specific instance or instances of lack of action or unacceptable action. Merely disagreeing with the result of an action taken is not basis for a complaint.

Please be aware that your complaint will have no impact on cases before a court of law. If an arrest is at issue, proper redress is found through the judicial system and should be pursued there.

Upon our receipt of the completed verification form, you will be notified of the action to follow.

Any questions you may have concerning your complaint should be directed to the Bureau of Professional Responsibility, at (717) 783-5145.

Very truly yours,

Director  
Bureau of Professional Responsibility

Suspensions of members who have been charged criminally with misdemeanors or felonies under the laws of the United States, Commonwealth of Pennsylvania, any other state(s) of the United States, and/or subdivisions thereof, shall be reviewed by the Office of Administration on a case-by-case basis, in consultation with the PSTA and the Department, as necessary, to determine whether benefits will continue in accordance with the provisions of this Section. A decision will be rendered as soon as possible, but not later than 20 working days from the date the Department is notified of the filing of charges in the case of a member who has been charged criminally with a felony or work-related misdemeanor and not later than 20 working days from the date the Department notifies the member that the member is being suspended in the case of a member who has been charged criminally with a non work-related misdemeanor. If the aforementioned time limits are exceeded, benefits will continue in accordance with the provisions of this Section. The determination of the Office of Administration will not be subject to the grievance and arbitration procedures.

Benefits during suspensions of one full pay period or less shall be processed in accordance with the current practice.

#### Section 4. Court-Martial Board

Court-martial proceedings shall provide that the accused may name, or designate the PSTA to name one of the three members of the Court-Martial Board.

#### Section 5. Rights

A member shall be advised of their Garrity/Miranda Rights when applicable.

A member who is the subject of an administrative inquiry or internal investigation shall be advised of and upon request, be afforded PSTA representation at any interview, predisposition conference, DAR issuance, or any hearing.



**Special Order**

**SUBJECT:** Internal Investigations - Supervisory Inquiry Process

**TO:** Area, Troop and Station Commanders, and Bureau Directors

**FROM:** Deputy Commissioner of Administration

**REFERENCE:** (a) AR 4-25, Internal Investigations

**ENCLOSURE:** (1) SUPERVISORY INQUIRY PROCESS

1. The Bureau of Professional Responsibility, Internal Affairs Division, is in the process of revising Reference (a). The revision will include policy and procedure related to the Supervisory Inquiry process. The Supervisory Inquiry process is intended to provide the Department with an efficient and effective means to resolve minor complaints made against Department members. The process was introduced in 1998, and has been extensively field-tested. When revised, Reference (a) will include policy/procedures concerning Supervisory Inquiries. In the interim, Enclosure (1) has been established to ensure uniformity and consistency of application throughout the Department.

2. Questions concerning the contents of this Special Order shall be directed to the Director, Internal Affairs Division at (717) 657-4201.

3. Commanders and Directors shall ensure that Troop office and library copies of Reference (a) are properly annotated.

Thomas K. Coury  
Lt. Colonel PSP

Distribution "B"



ENCLOSURE (1)

**SUPERVISORY INQUIRY PROCESS**

- A. **Definition:** Complaints which can be resolved by Commanders/Supervisors through the Supervisory Inquiry process include minor infractions; omissions/commissions which violate Department policy or regulation; and performance inadequacies for which, if true, would not give rise to formal discipline (written reprimand and above). Other examples include: dissatisfaction with performance of duty, rudeness/discourtesy, etc. Complaints processed as Supervisory Inquiries are those that can be resolved by the appropriate command/supervisory personnel.
- B. **General:** The Supervisory Inquiry process is intended to afford Commanders/Directors a mechanism by which minor complaints can be resolved at their level without the need to enter the complaints into the formal discipline system. Addressing and resolving minor complaints or performance inadequacies are a function of supervision and chain of command. Supervisory Inquiries are intended to be resolved through counseling, training or other remedial action.
- C. **Responsibilities:**
1. Troop Commanders/Division Directors shall ensure:
    - a. **Assignment:** All Supervisory Inquiries are assigned to the appropriate command/supervisory personnel for resolution.
    - b. **Upgrading:** The Director, Bureau of Professional Responsibility, shall be contacted when an inquiry uncovers facts that warrant an Internal Affairs investigation.
    - c. **Notifying Complainants:** Complainants are advised, in writing, of the results of an inquiry.

- d. **Notifying Subjects:** Subjects of Supervisory Inquiries are notified of the results. Notification can be in the form of correspondence outlining counseling, issuance of a Supervisory Notation, etc.
- e. **Determinations:** A determination is made based on the results of the inquiry. NOTE: The term "Sustained" shall be not be utilized. This term is used by the adjudicator in full Internal Affairs investigations.

2. **The Director, Internal Affairs Division shall:**

- a. **Ensure the Supervisory Inquiry process is administered in a uniform manner throughout the Department.**
- b. **Determine, in concurrence with Commanders/Directors, which complaints are processed as Supervisory Inquiries.**
- c. **Ensure records of Supervisory Inquiries are maintained.**

**D. Reporting:**

- 1. **The results of Supervisory Inquiries shall be reported on correspondence, Form STD-501. The depth of inquiry should be a reflection of the seriousness of the complaint or incident. Supervisory Inquiries should contain the following:**
  - a. **A brief synopsis of the allegation.**
  - b. **A brief synopsis of information obtained from an interview with the complainant.**
  - c. **A brief synopsis containing information obtained from interviews with the subject and any other involved personnel or witnesses.**
  - d. **Copies of reports or other documents that are relevant to the inquiry.**
- 2. **In accordance with Reference (a), all subjects of a Supervisory Inquiry shall be issued a Notification of Inquiry and**

**Administrative Warning.** A copy of both shall be attached to the completed Supervisory Inquiry.

- E. **Endorsement:** Upon completion of a Supervisory Inquiry, Troop Commanders/Division Directors shall prepare an endorsement indicating their determination and what action was taken. An explanation shall be included if the complainant was not contacted and advised of the results of the inquiry.
- F. **Upgrading:** Supervisory Inquiries shall be upgraded to a full investigation if the inquiry uncovers allegations of misconduct that would give rise to formal discipline. This determination will be made by the Director, Bureau of Professional Responsibility, with the concurrence of the Troop Commander/Division Director.
- G. **Routing:** Troop Commanders/Division Directors shall forward the original copy only of completed Supervisory Inquiries to the Director, Bureau of Professional Responsibility.
- H. **Documentation of Action Taken:** Troop Commanders/Division Directors shall ensure, upon completion of an inquiry, appropriate action (e.g., issuance of a Supervisory Notation, interim Performance Evaluation Report, etc.) is taken.

## SUPPLEMENTAL REPORT – IAD #1999-391

I was contacted by telephone in late September or early October 1998 by Federal Bureau of Investigation Special Agent Ralph W. Kush, of the Pittsburgh Office. KUSH stated he was conducting an investigation into political corruption in Western Pennsylvania. During his investigation, an individual, (later identified as DENNIS JAY BRIDGES), who was seeking assistance in entering the Pennsylvania State Police as a Cadet, approached a FBI Confidential Informant (CI). According to KUSH, BRIDGES had taken the Cadet entrance examination and was in Band "B". BRIDGES was seeking assistance in moving from Band "B" to Band "A" through a series of financial payoffs to an unknown political figure.

According to KUSH, the meeting between BRIDGES and the CI was arranged by Trooper Kip Stanton of the Pennsylvania State Police. During their meeting with the CI, KUSH stated that BRIDGES and STANTON portrayed entrance into the Department through a series of payoffs as commonplace.

Due to the nature of the investigation, KUSH requested this information be kept confidential. To facilitate their investigation, KUSH also requested that I provide resource information to him on such things as Cadet entrance examination process, selection process, Cadet class schedule dates, etc. KUSH agreed to my request that the Internal Affairs Division of the State Police be permitted to initiate any criminal charges against any member or employee of the Department should the FBI determine the system had been compromised.

I informed Lieutenant Colonel Hickes of this investigation in early October 1998. LTC Hickes ordered me to maintain the FBI's request for confidentiality, cooperate to the extent possible with any request for assistance by the FBI and keep him informed of any significant developments in the case.

I met with KUSH and his supervisor Michael J. SOOHY at Troop T, Everett on October 21, 1998. KUSH played an audiotape obtained from a body wire of a conversation between BRIDGES, STANTON and the CI. (KUSH later mailed me a copy of a transcript of the conversation.)

I had sporadic contact with KUSH over the next few months. Occasionally KUSH telephoned me regarding the next scheduled Cadet class date, etc. On occasion I, in turn, provided case updates to LTC Hickes.

Sometime in late February or early March of 1999, KUSH contacted me to report the CI received a payoff of \$1,000, which the FBI captured on videotape between BRIDGES, STANTON and the CI. On March 15, 1999 I met with KUSH and SOOHY at the Holiday Inn in Indiana. I viewed the tape at this time. I provided LTC Hickes with an update of this development.



SOOHY mailed a package of transcripts to me in mid-April, 1999 which arrived either shortly before or during the week I was attending an Internal Affairs Conference in Portsmouth, New Hampshire.

On May 1, 1999, KUSH informed me he thought the investigation had reached its conclusion. In his opinion, he believed the investigation ruled out any possibility of system compromise.

During the week of May 3, 1999 I informed LTC Hickes of the status of this investigation. LTC Hickes indicated he would arrange for a briefing with the Commissioner.

On May 12, 1999 LTC Hickes and I briefed the Commissioner on this investigation.

On May 19, I faxed a SP 1-101 to the Internal Affairs Division in which I named Trooper Kip Stanton as a subject of a criminal investigation.

On May 26, I gave Lieutenant John R. Brown the videotape and transcripts sent to me by the FBI.

*Captain [Signature]*

PSP STRAT DEVEL DIV

717 57 4360

05/19 '99 14 NO.212 02/02

SP 1-101 (1-93)

PENNSYLVANIA STATE POLICE

USE OF FORCE OR COMPLAINT  
RECEPTION AND PROCESSING WORKSHEET

BPR CONTROL NUMBER

1.  
IAD 1999-391

## COMPLAINT INFORMATION

NAME	FIRST <u>DARRELL</u>	M.I. <u>G.</u>	LAST <u>OBER</u>
HOME ADDRESS	STREET/P.O. BOX <u>2629 MARKET PLACE - BUREAU OF TECHNOLOGY SERVICES</u>		
	CITY <u>HARRISBURG</u>	STATE <u>PA</u>	ZIP CODE <u>17110</u>
EMPLOYER	NAME & ADDRESS <u>PA. STATE POLICE</u>		HOME PHONE # ( <u>717</u> ) <u>790-0708</u>
			WORK PHONE # ( <u>717</u> ) <u>657-4231</u>

3. NON-COMPLAINT USE OF FORCE REPORT	<input type="checkbox"/> SHOOTING INCIDENT	<input type="checkbox"/> PHYSICAL FORCE	LEGAL INTERVENTION
--------------------------------------	--	---	--------------------

## 4. SUBJECT OF ALLEGATION/REPORT (List additional subjects on back)

NAME	FIRST <u>KIPP</u>	M.I. <u>A.</u>	LAST <u>STANTON</u>
LOCATION	TROOP/BUREAU <u>B</u>	STATION/DIVISION <u>UNIONTOWN</u>	JOB ASSIGNMENT <u>PATROL</u>
SSN <u>205-56-1798</u>	DCE <u>1/3/94</u>	← TO BE COMPLETED IF KNOWN OR AVAILABLE	

## 5. DETAILS OF ALLEGATION

ROUTE/STREET <u>SEE BELOW</u>	CITY/TWP/BORO	COUNTY	DATE	TIME	DAY
TYPE OF ALLEGATION (CHECK ONE)	<input type="checkbox"/> PHYSICAL ABUSE <input type="checkbox"/> VERBAL ABUSE <input checked="" type="checkbox"/> CRIMINAL CONDUCT <input type="checkbox"/> IMPROPER CONDUCT ON DUTY <input type="checkbox"/> IMPROPER CONDUCT OFF DUTY <input type="checkbox"/> DISSATISFACTION WITH PERFORMANCE ON DUTY <input type="checkbox"/> OTHER (Please explain)				

SYNOPSIS	<p>APPROX. 10/98 FBI AGENT RALPH KUSH TELEPHONED ME TO REPORT THE SUBJECT MAY BE INVOLVED IN ATTEMPTING TO BRIBE A PUBLIC OFFICIAL. INVESTIGATION BY THE F.B.I. HAS BEEN ON-GOING. ON MAY 1 AGENT KUSH NOTIFIED ME THE INVESTIGATION CANNOT PROCEED AS A CRIMINAL INVESTIGATION HANDLED BY PSP IAD COULD MOVE FORWARD ON SUBJECT STANTON. KUSH IS LOCATED IN THE PITTSBURGH F.B.I. OFFICE.</p>
----------	--

EXHIBIT  
#20

## 6. RECEPTION DATA

DATE RECEIVED <u>5-19/99</u>	TIME RECEIVED <u>1423</u>	LOCATION RECEIVED	TROOP/BUREAU <u>O.B.R.</u>	STATION/DIVISION <u>6</u>
RECEIVED BY	NAME <u>LT. JOHN R. BROWN</u>	ATTACHMENT PAGE <u>1</u> OF <u>1</u>		

## FOR BUREAU USE

INVESTIGATOR	NAME <u>IAD WEST - SGT. SEIFNER</u>
CONTROL NO. ISSUED BY	DATE ASSIGNED
	DATE DUE

ENCLOSURE 1

STD-501, 9-88

COMMONWEALTH OF PENNSYLVANIA

DATE: May 13, 1999

SUBJECT: FBI Investigation

TO: Commissioner

FROM: Captain Darrell G. Ober *DO*  
Bureau of Technology Services

*Rc'd 5/13/99*  
*PJE*

1. During my assignment as the Director, Internal Affairs Division, and while the Acting Director of the Bureau of Professional Responsibility, I was contacted, by telephone, in early October, 1998 by FBI Special Agent Ralph W. Kush, Pittsburgh Office, regarding an on-going investigation the FBI was conducting involving possible political corruption in Western Pennsylvania.

2. According to Kush, an FBI informant was approached by a subject, Dennis Jay Bridges, who was seeking assistance in entering the Pennsylvania State Police Academy as a Cadet. Bridges had taken the entrance examination and finished in Band "B". Kush stated Bridges was attempting to become a Trooper through a series of financial transactions involving an unidentified State Senator and unknown high ranking individuals in either the Governor's Office, the State Police, or both. Bridges made contact with the CI through Trooper Kip A. E. Stanton, Troop B, Uniontown. According to Kush, Bridges and Stanton both knew other Troopers who were able to gain entry into the Department in such a manner.

3. During my initial contact with Kush, he expressed his desire to make contact with someone from the Internal Affairs Division in the State Police. Kush stressed the need for discretion until such time as more information could be developed. He further stressed the State Police would not be needed to play an active role in the investigation; only as resource for information such as enlistment process data, procedure, Cadet class schedule, etc. Since the focus of their investigation was on political corruption, Kush was agreeable to the State Police Internal Affairs Division handling any and all criminal prosecution of Department members, if warranted.

4. After weighing all of the options, it was my decision to approach Lieutenant Colonel Hickes (inasmuch as he had just assumed office) and inform him of this on-going investigation. I briefed LTC Hickes on the details as I knew them to be. Upon orders of LTC Hickes, I have not spoken about this investigation to any other Department personnel. I was further ordered to assist the FBI to the extent possible and only until such time as disclosure could be made without compromising the outcome of this investigation.

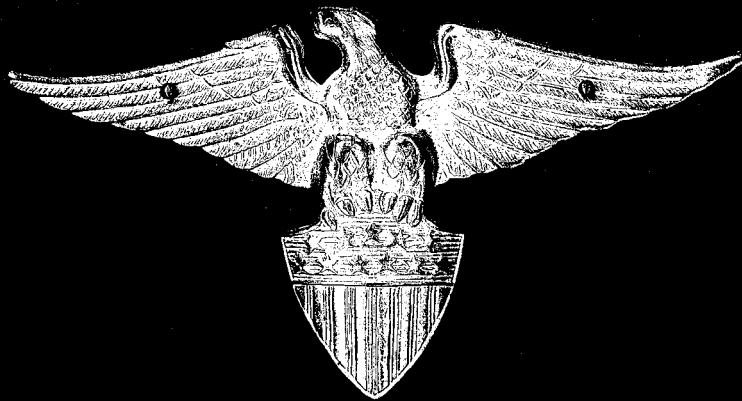


5. Since October, I have had incidental contact with Kush and his Supervisor, Michael J. Soohy. Sporadically Kush would telephone me to provide me with a status report or to make further inquiry mostly concerning Cadet applications issues, e.g., class appointment dates, etc.

6. I met with both Kush and Soohy on two occasions; the most recent being March 15, 1999. Within the past two weeks, Kush has informed me that recent developments in the case have lead him to conclude the investigation cannot move forward and the no evidence of impropriety in the either the Governor's Office or the State Police have been uncovered. Kush stated it was the appropriate time for the State Police to pick up the criminal investigation on Trooper Stanton.

7. When informed of the status of the investigation, I contacted LTC Hickes and provided him with this information. LTC Hickes stated to me that he would arrange for a time to brief the Commissioner at the earliest possible opportunity.

Exhibit 22



TOP COP

Pennsylvania Law Enforcement  
Academy

DARRELL OBER

3 April, 1980

29

**ORIGINAL**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**DARRELL G. OBER**  
**Plaintiff**

**vs.,**

**PAUL EVANKO, MARK  
CAMPBELL, THOMAS  
COURY, JOSEPH  
WESTCOTT,  
HAWTHORNE CONLEY  
JOANNA REYNOLDS and  
SYNDI GUIDO**

**Defendants**

**CIVIL ACTION LAW  
1: CV-01-0084**

**(JUDGE CALDWELL)**

**JURY TRIAL DEMANDED**

**Proceedings:**

**Video Deposition  
Charles Skurkis**

**Date:**

**March 5, 2002**

**APPEARANCES:**

**For the Plaintiff:**

**Donald Bailey, Esquire  
4311 North 6<sup>th</sup> Street  
Harrisburg, PA 17110**

**For the Defendants:**

**Joanna Reynolds Esquire  
1800 Elmerton Avenue  
Harrisburg, PA 17110**

1           TONY MARCECA: Good afternoon ladies and  
2 gentlemen, its 1:15, 5 March 2002. Be advised the video  
3 and audio is in operation. My name is Tony Marceca.  
4 My address is 2219 Dixie Drive, York Pennsylvania,  
5 17402. I've been contracted by PR Video to be the video  
6 operator for this deposition. The case is the United  
7 States District Court, Middle District of Pennsylvania. It's  
8 caption C: 01 correction 00-0084.

9           MR BAILEY: Yeah let's make sure, that's 1:CV-  
10 01-0084.

11           TONY MARCECA: Thank you.

12           MR BAILEY: That's okay.

13           TONY MARCECA: This deposition is being held  
14 at the law office of Mr. Don Bailey at 4311 N. 6<sup>th</sup> Street,  
15 Harrisburg Pennsylvania, 17110. The video deposition is  
16 being taken on behalf of the plaintiff Mr. Darrell Ober.  
17 The witness name is Captain. Charles Skurkis.

18           MR BAILEY: Ah, SKURKIS

19           TONY MARCECA: SKURKIS?

20           MR.BAILEY: SKURKIS

21           TONY MARCECA: And the time now is 1:16.  
22 And Captain would you please raise you're a right hand  
23 and state your name.

24           CAPTAIN. SKURKIS: Charles Skurkis

25           TONY MARCECA: And you do swear to tell the

1 truth, the whole truth so help you God.

2 CAPTAIN. SKURKIS: I do.

3 TONY MARCECA: And thank you. Mr. Bailey

4 MR BAILEY: Yes

5 TONY MARCECA: Could we have a sound  
6 check around the room please?

7 MR BAILEY: Yep, yeah. First of all just make  
8 sure the record, Captain that's S-K-U-R-K-I-S right?

9 CAPTAIN. SKURKIS: That's correct.

10 MR BAILEY: Skurkis, Capt. Charles Skurkis.  
11 Okay, yeah my name's Don Bailey. I'm attorney for  
12 plaintiff Darrell G. Ober. Joanna if you and Barb could  
13 put your name and official address on the record and a  
14 phone number would help too.

15 JOANNA REYNOLDS: My name is Joanna  
16 Reynolds. I'm an assistant counsel with the State Police.  
17 I represent the defendant in this action. My address is  
18 1800 Elmerton Avenue, Harrisburg PA, 17110 and my  
19 phone number; my office phone number is 717-783-  
20 5568.

21 BARBARA CHRISTI: Barbara Christi, Chief  
22 Counsel Pennsylvania State Police. My address and  
23 phone number are as given by assistant counsel Joanna  
24 Reynolds.

25 MR BAILEY: Okay, Captain what we're going to

1 do here this is a video deposition. The videotape will be  
2 maintained here, although your counsel's already  
3 indicated that they're going to be getting a copy of it.  
4 Under the rules it has to be maintained here for you to  
5 come and look at it if you want to. That's up to you, and  
6 as I said they've indicated they're going to pursue a copy  
7 anyway. We will be making a transcript. We'll have a  
8 transcript made from the tape. During this deposition I'm  
9 gonna be asking you a series of questions and that sort  
10 of thing. Let me just give you a few pointers which I give  
11 to everyone in these kind of situations. If, make sure you  
12 get an opportunity to answer fully and completely. If  
13 some how perchance I interrupt you or you don't get a  
14 chance to finish, make sure you either stop me or make  
15 sure that you get a more complete answer, okay? I won't  
16 be doing it on purpose, but you know maybe  
17 unintentional something these kind of things you get lost  
18 in thought or whatever happens. I don't know. Now also  
19 during the process from time to time there might be an  
20 objection raised by an attorney. Stop, the attorneys may  
21 have something to say. You go by the advice of your  
22 lawyers here. I assume the attorneys here will be  
23 representing you for purpose of this deposition. Counsel,  
24 I guess, are we okay with objections except those formal  
25 requests reserved the time of trail?

1 BARBARA CHRISTI: That's fine.

2 MR BAILEY: That's acceptable. I can't think of  
3 much else. I don't think we'll be too long with you  
4 anyway. The last thing, if you don't understand a  
5 question make sure that you ask me to explain it. If you  
6 even for that matter, get curios about where I'm going  
7 with questions or why I'm asking questions. I like to  
8 develop a good rappore and maintain a good rappore of  
9 the witness so you feel free to answer in a relaxed way.  
10 We get a better fact record that way. So if I'm going  
11 somewhere with questions and you're even curios  
12 sometimes witness, you know, cause it's a tough position  
13 to be in they'll be concerned or they'll want to know what  
14 your getting that sort of thing. I don't mind you asking  
15 me. I have no trick questions in mind. I have no interest  
16 in that kind of nonsense. Okay? I just want to try and  
17 learn what I can from you and that sort of thing. Do you  
18 have any questions that you want to ask of me or that  
19 you can think of?

20 CAPTAIN. SKURKIS: Not at this time.

21 MR BAILEY: All right well, don't be afraid if  
22 you do. If you need a break or something like that just  
23 tell your lawyers and your fine. Okay captain how are  
24 you employed and where do you work and what do you  
25 do for I assume the Pennsylvania State Police. But tell

1 me what you do for them and where you work, where  
2 you're assigned, and that sort of thing real quick.

3 CAPTAIN. SKURKIS: Currently I'm the Director  
4 of the Systems and Process, the new division Bureau of  
5 Professional Responsibility. Basically I oversee three  
6 inspection teams which travel to all the installations  
7 through out the state and inspect the facilities for  
8 compliance and regulation and department policy.

9 QUESTION: And the other division within BPR  
10 is Internal Affairs, IAD it's called.

11 ANSWER: That's correct.

12 QUESTION: So you got the two divisions and  
13 you're heading up one division and they're both with in  
14 the Bureau of Professional Responsibility. Right?

15 ANSWER: That's correct.

16 QUESTION: And who's the head guy for  
17 Professional Responsibility? Is that Major Conley?

18 ANSWER: Currently, it's

19 QUESTION: I'm sorry.

20 ANSWER: Currently it's Major John Pudliner.

21 QUESTION: Oh that's right. That's right. And  
22 Mr. Conley you see he's been promoted. Right?

23 ANSWER: That's correct.

24 QUESTION: I'm sorry, sir.

25 ANSWER: He's the Deputy of Administration

1 for the department.

2 QUESTION: Okay so he's moved on from BPR  
3 there. He was at BPR before Mr. Pudliner. Right?

4 ANSWER: That's correct.

5 Question: Okay, now my research indicates  
6 that you've also served in IAD.

7 ANSWER: That's correct.

8 QUESTION: And you were an Administrative  
9 Sergeant, a Lieutenant. Section Commander, and as a  
10 Captain. Is that right?

11 ANSWER: That's correct.

12 QUESTION: Now when did you first find out  
13 about the investigation into Captain. Darrell Ober? You  
14 know what I mean by investigation into Captain Darrell  
15 Ober?

16 ANSWER: No I don't.

17 QUESTION: You know, you're familiar with the  
18 lawsuit that's been filled in this case?

19 ANSWER: Yes, I have been.

20 QUESTION: This is a copy of the complaint,  
21 the amended complaint have you had an opportunity to  
22 read it?

23 ANSWER: No I have not.

24 QUESTION: Do you want to just take a look at  
25 the caption? You can keep it

1                   ANSWER: I've seen, I notice two appear here.  
2                   I've seen the defendant's name.

3                   QUESTION: Do you know what the lawsuit is  
4                   about, at least generally?

5                   ANSWER: What I read in the newspaper.  
6                   That's what I know and it has something to do with a  
7                   treatment regarding a transfer. The impropriety of a  
8                   transfer and some other ill treatment.

9                   ANSWER: Okay, now Captain Skurkis. How  
10                  long have you known Darrell Ober?

11                  ANSWER: I would estimate, I remember  
12                  knowing him as a Sgt. in Research and Development. So  
13                  that was probably the end of the 80's beginning of the  
14                  90's.

15                  QUESTION: Now did you become aware at  
16                  some point that he had been approached or I guess a  
17                  better word would be informed by the FBI about some  
18                  sort of investigation that may have involved the State  
19                  Police?

20                  ANSWER: Yes I am aware of that.

21                  QUESTION: When did you learn about that?  
22                  In other words, when did you learn that the FBI had  
23                  approached or you know come to Captain. Ober. Who at  
24                  the time, I'm sure we both know this anyway, who at the  
25                  time I believe was the Director of IAD.

1                   ANSWER: Okay, I'm aware that I knew in  
2 June. It was probably earlier than June, about a month  
3 earlier than June of 1999.

4                   QUESTION: All right now, is it fair to say that  
5 sometime in the fall of 1998 the FBI had come to  
6 Captain. Ober and indicated that they where doing some  
7 kind of investigation that might or might not implicate  
8 the State Police in some way?

9                   ANSWER: I had heard that, but I don't know if  
10 that's factual.

11                  QUESTION: What did you learn? What do you  
12 recollect learning in the spring of 1999?

13                  ANSWER: That there was a question of  
14 Captain Ober having information and not properly  
15 passing it on to his superiors.

16                  QUESTION: Who did you learn that from?

17                  ANSWER: It may have been Major Conley,  
18 probably Major Conley.

19                  QUESTION: Do you remember what Major  
20 Conley said at the time?

21                  ANSWER: No. There may have been several  
22 conversations regarding this over a period of time. I don't  
23 know what was said in what conversation. I know the  
24 issues where in my capacity as Director of IAD what I  
25 had felt, it had come upon myself to pass this

1 information on to my Major. If the information was  
2 delivered to me. Whether or not I was aware of any  
3 regulation regarding the requirement to pass this  
4 information on.

5 QUESTION: Okay, now you say, I may have  
6 misunderstood your response. Were you saying this is  
7 what you were thinking or is this what Major Conley  
8 discussed with you? And I didn't make my question  
9 clear. What you have just shared with me was that  
10 something that you were thinking, questions that  
11 occurred to you or where these things that Major Conley  
12 had raised with you?

13 ANSWER: They were at the very least  
14 questions I have in my mind. They were probably  
15 predicated on on issues that Major Conley brought up. I  
16 wasn't persuaded to exactly what had happened or how it  
17 had happened. So if I had heard basically what you had  
18 said now the first question in my mind would be well I  
19 was in that position what would I do with the information  
20 if I learned it from the FBI.

21 QUESTION: Right and you would have passed  
22 it on?

23 ANSWER: Yes I would have passed it on, sure.

24 QUESTION: Would you have investigated to  
25 see if the person you were passing it on to were a target

1 or a potential target?

2 ANSWER: I would have to consider what the  
3 information is other wise if it was information that a  
4 trooper stopped someone on the interstate and was  
5 verbally abusive. I would assume it wasn't my Major.  
6 Especially if it happened in Lackawanna County.

7 QUESTION: And what if it was your Major that  
8 stopped some body? What if the FBI came to you and  
9 said your Major was suspected of stopping some body on  
10 the highway and stealing money from them? You'd go  
11 tell the Major that the FBI was investigating him for that?

12 ANSWER: No

13 QUESTION: Well why wouldn't you do that?

14 ANSWER: Because there would be a question  
15 of whether or not investigatively would that be the proper  
16 time to let the subject of the investigation know the  
17 information you have.

18 QUESTION: And that's a matter not only of  
19 training, but I mean its common sense?

20 ANSWER: Correct.

21 QUESTION: And particular if it wasn't your  
22 investigation right? I mean if it's an outside agency that  
23 you respect like the FBI doing an investigation. You're  
24 going to respect the prerogatives of letting them conduct  
25 their investigation without interference. Am I correct?

1           ANSWER: Well, I would question why did they  
2 tell me if they didn't want me to do anything with it.

3           QUESTION: Would you second-guess why they  
4 would tell you? Or would you wonder why they would  
5 tell you? Know the difference?

6           ANSWER: Well I would probably ask them then  
7 why are sharing this with me.

8           QUESTION: Oh okay. And if they indicated  
9 that there may be any number people above you in the  
10 chain of command involved in a problem would you  
11 assume well I must not be a suspect, but there may be  
12 somebody up there who is.

13           ANSWER: If the information that was passed  
14 on to me involved the possibility likely hood that someone  
15 in my chain of command was involved then I would have  
16 to evaluate the likely hood of that being possible. Now a  
17 lot of times people aren't familiar with the Hierarchy of  
18 the State Police and become confused or they think that  
19 our captains and majors drive around on the road  
20 stopping vechiles. So without having all the information  
21 there would be an evaluation process depending upon  
22 what information I receive.

23           MR BAILEY: Absolutely. And would you  
24 respond to that outside agency if it were the FBI out of  
25 blind loyalty or would you. You just told us that you

1 would use an evaluative process to do what's right. That  
2 would include if the information seemed justified not to  
3 compromise the investigation. That's your first duty.  
4 That's what you sort of told me.

5 ANSWER: I think I covered that, yeah.

6 QUESTION: Yes sir, absolutely. Now, at the  
7 time that you indicated that some time on or about June  
8 of 1998 you had heard something about Captain. Ober. I  
9 don't want to mischaracterize your words. I thought  
10 you'd indicated something that Mr. Conley, that's why I  
11 asked you this question about whether it was you  
12 thinking or what Mr. Conley had thought about it or was  
13 saying. But that some time on or around June 1999 a  
14 question on whether or not Mr. Ober had properly  
15 handled information he received from the FBI. Is that a  
16 fair way to say it? If not tell me the way to say it.

17 ANSWER: The circumstances of Captain Ober  
18 possibly not properly handling information. I don't know  
19 if it was a question.

20 QUESTION: Can you stop right there? That's  
21 exactly what you said. I'm sorry I interrupted you. I  
22 remember now that is what you said about properly  
23 handling. What do you mean by that sir? Tell us  
24 Captain what in terms of responding to my question,  
25 what do you mean by that?

1 ANSWER: By?

2 QUESTION: Well properly handling  
3 information. What do you mean? There must have been  
4 surrounding facts or circumstances that cause you to  
5 remember this in that context. There must have been a  
6 question in other words of whether Captain. Ober  
7 properly handled information. I'd like you to tell me what  
8 you recollect about that

9 ANSWER: As a Director of the Internal Affairs  
10 Division it is not outside the realm of possibility that you  
11 would receive information regarding complaints of  
12 misconduct against members of the department.

13 QUESTION: Yes sir exactly. You would be a  
14 logical place wouldn't it?

15 ANSWER: Well at some point. You're usually  
16 at the end of the series of notification, but you could be  
17 the first person contacted. That's possible.

18 QUESTION: But you are a logical person to  
19 contact in a circumstance where allegations might  
20 involve state police members himself or herself. Right?  
21 As apposed to third parties outside the state police.

22 ANSWER: I'm assuming the third party outside  
23 the state police is that's the shoe into the state police. I  
24 mean they're the one sharing the information. How does  
25 that information get to the state police? Well I would

1 consider that a third party.

2 QUESTION: I mean interns of a target? See if  
3 a potential wrong doer is a state policemen or member of  
4 the state police, my question is IAD might be a logical  
5 place for an outside investigative agency to contact.  
6 Right?

7 ANSWER: Correct.

8 QUESTION: So the issue then becomes with  
9 that out of the way. The issue then becomes; in this case  
10 it was Captain. Ober, whether or not he handled that  
11 information properly. Right? That's what you told us.  
12 Isn't it?

13 ANSWER: Correct

14 QUESTIONS: What do you remember were the  
15 questions about whether he handled it properly? I'd like  
16 to know what the facts were. Did he, how he could have  
17 mishandled it.

18 ANSWER: What did he do with the  
19 information would be, that was the issue. Our regulation  
20 AR 4.25 basically dictates that a member regardless of  
21 their rank upon a receipt of a complaint of misconduct  
22 against an individual that's a member of the department,  
23 that they prepare a worksheet and forward it to the  
24 Director of the Bureau of Professional Responsibility.

25 QUESTION: Let's stop right there. This wasn't

1 about an internal complaint or a complaint form outside  
2 the agency about misconduct. Wasn't this about a  
3 criminal investigation being conducted by the Federal  
4 Bureau of Investigation?

5 ANSWER: I don't know.

6 QUESTION: So you're saying that rule, you're  
7 saying that, are you telling us that in your view rule 4.25  
8 governed how Captain Ober should have handled the  
9 information form the FBI?

10 ANSWER: Not necessarily Captain Ober, but  
11 any member. What do they do with the information once  
12 they receive it?

13 QUESTION: And you're saying that Captain.  
14 Ober should have open an IAD investigation on it?

15 ANSWER: I still don't know what the  
16 information is. There are cases where you receive  
17 information and it has nothing to do with a member of  
18 the state police. Then there is no activity.

19 QUESTION: No IAD action.

20 ANSWER: Right.

21 QUESTION: But in this case you don't know?

22 ANSWER: Exactly, I do not know.

23 QUESTION: Okay, so what I'm asking you then  
24 and I can understand that. What I'm asking you then is  
25 what you recollect you might have heard that Captain

1 Ober may have done incorrectly? Let's use the word  
2 incorrectly. What did you hear at the time that you can  
3 recollect that Captain. Ober may have done incorrectly.  
4 Here's where I'm going. For example, did Major Conley,  
5 at that time it was Major Conley. Right? Did Major  
6 Connelly say to you, CPT Skurkis Ober did this and  
7 should have done that? Or COL. Coury thinks he did  
8 this and should have done that? Or the Commissioner  
9 thinks this or that? What was said? Do you remember?

10 ANSWER: Nah, it was more of a, you have to  
11 remember that I remember that I started with the  
12 Internal Affairs Division. When we started the Internal  
13 Affairs Division I was on the ground floor of that. I have  
14 the experience of, up to that point, fourteen years of  
15 dealing with complaints and procedures in headquarter.  
16 And his query was one of how would it expect to have  
17 been handled if information was provided by an outside  
18 police agency regarding member misconduct.

19 QUESTION: How are you defining member  
20 misconduct?

21 ANSWER: Well a member violation. Violating  
22 either rule or regulations of the department or a violation  
23 of Pennsylvania or Federal Law.

24 QUESTION: So Member misconduct you  
25 would include let's say a formal FBI investigation? Or for

1 that matter a US Grand Jury investigation?

2 ANSWER: If a member were an active  
3 participant in whatever's being investigated, yes?

4 QUESTION: Well and if a member were a  
5 target?

6 ANSWER: Again assuming if the FBI or  
7 another federal agency is conducting an investigation it  
8 would be a matter of a criminal violation. And yes if they  
9 where a target I would assume there is some level of  
10 allegation that this member was engaged in criminal  
11 conduct.

12 QUESTION: What if the potential targets or  
13 expressly stated targets where member of a group in the  
14 Pennsylvania State Police? Can I give you an example of  
15 what I mean by that? So you know what I mean

16 ANSWER: Please do.

17 QUESTION: Let's say that the FBI comes in  
18 and says somebody. We have reason to believe that  
19 somebody involved in your Inspections Division of BPR  
20 might be connected with a, it was some criminal activity,  
21 but we don't know who. We've got some information from  
22 a CI and we don't know who. Would you call a meeting of  
23 the Inspections Division and say the FBI came in today,  
24 facetiously of course, the FBI came in today and one of  
25 your folks might be doing this? I mean obviously you're

1 not gonna do that?

2 ANSWER: No. No.

3 QUESTION: Now what if the FBI come in and  
4 says higher ups might be involved in this? What would  
5 you do then? Do you think?

6 ANSWER: Try to determine what they mean by  
7 higher ups. Like I said a lot of times people just don't  
8 understand our rank structure. Coming from the FBI I  
9 would say they would have a better understanding of it  
10 than John Q. Citizen does, but even so that's very loosely  
11 defined higher ups.

12 QUESTION: Sure it is, but you know it's above  
13 you don't you?

14 ANSWER: To a trooper on the road a Corporal  
15 is a higher up. So if they can equate they're talking to  
16 me as a Captain and they're saying higher ups of mine or  
17 someone higher in rank than I am. Then of course it  
18 would be a superior of mine.

19 QUESTION: How many Majors in the state  
20 police?

21 ANSWER: I believe seven-teen.

22 QUESTION: Not a huge number is it sir?

23 ANSWER: No.

24 QUESTION: And you have a very small number  
25 of Lieutenant Colonels. Right?

1 ANSWER: That's correct.

2 QUESTION: And the top guy or lady what ever  
3 the case might be or might be in history we don't know.  
4 That would be a Colonel?

5 ANSWER: Commissioner yes.

6 QUESTION: Commissioner, well  
7 commissioner's a Colonel. Right? But I mean they don't  
8 have higher, you know like a Generals or Lieutenant  
9 Generals and stuff like that. Right?

10 ANSWER: No.

11 QUESTION: So you're talking about a Colonel,  
12 one the only one Colonel in the state police?

13 ANSWER: That's correct.

14 QUESTION: A couple of Lt. Colonels. Right?  
15 And you have seven-teen Majors might be give or take  
16 one or two at some time. And then you remember Major,  
17 of course you got Captains, Lieutenants, and you know  
18 sort of like the military. But not completely, but I mean  
19 you have Corporals and Troopers and that sort of thing,  
20 Sergeants. Now, you only have one rank Lieutenant  
21 right?

22 ANSWER: Yes.

23 QUESTION: Not a first or second or anything  
24 like that. Okay now how many Lieutenants you have?

25 ANSWER: A hundred thirty.

1 QUESTION: A hundred thirty?

2 ANSWER: Yes.

3 QUESTION: And Captain significantly less, but  
4 you might have a hundred Captains at some time or  
5 close to it. Right?

6 ANSWER: No.

7 QUESTION: Sixty, Seventy, Eighty? Maybe? If  
8 you know.

9 ANSWER: I don't know.

10 QUESTION: I don't either. I confess. Okay but  
11 anyway. But when you get to Major and above. You're  
12 not talking about more then twenty-five people are you?

13 ANSWER: I would say not.

14 QUESTION: It's fall. It's 1998. Sometime on or  
15 about early October of 1998. Late September early  
16 October of 1998. Was Major Conley assigned to be the  
17 head of BPR at that time? Sometime around there?

18 ANSWER: I believe his promotion and  
19 assignment was in the early part of October of 1998.

20 QUESTION: Okay and where was he  
21 previously?

22 ANSWER: He was a Troop Commander, Troop  
23 B, Washington.

24 QUESTION: Jurisdictionally? Geographic  
25 jurisdiction, what does Troop B cover?

1                   ANSWER: I don't know the exact counties, but  
2 it would be a section of South Western Pennsylvania.

3                   QUESTION: Well how far East would it come?

4                   ANSWER: I'm not sure.

5                   QUESTION: Do you know how far North it  
6 would go?

7                   ANSWER: You put me on the West Side of the  
8 Susquehanna River and I'm confused as to counties and  
9 bounties and excreta etc.

10                  QUESTION: That's okay. You don't know  
11 where Westmoreland County, Mother Westmoreland  
12 County as I know it?

13                  ANSWER: Yes I do.

14                  QUESTION: Mother Westmoreland is just east  
15 of Allegheny County right?

16                  ANSWER: Right.

17                  QUESTION: And Allegheny County is a county  
18 that's plum in the middle lies the city of Pittsburgh right?

19                  ANSWER: Right.

20                  QUESTION: And Washington County borders  
21 Allegheny County to the South and South West right?

22                  ANSWER: I would probably guess.

23                  QUESTION: You know where Indiana County  
24 is?

25                  ANSWER: Somewhere North of there.

1 QUESTION: Maybe northeast of Westmoreland  
2 County and joining Westmoreland County along maybe  
3 like the Connemaugh River or Kiskiminitus Rivers. Do  
4 you know?

5 ANSWER: I'm not certain.

6 QUESTION: Well but it might.

7 ANSWER: It might.

8 QUESTION: Do you know where Indiana  
9 County is jurisdictionally? What troop it's in?

10 ANSWER: I believe Troop A.

11 QUESTION: Troop A, and where's Troop A  
12 headquartered?

13 ANSWER: Greensburg

14 QUESTION: And where is a.... Troop B is  
15 Washington.

16 ANSWER: Correct

17 QUESTION: And is Allegheny a different troop?

18 ANSWER: I believe Allegheny is part of Troop  
19 B, but I'm not certain on that.

20 QUESTION: Well... Now... Anyway Captain. or  
21 Major Conley had come from you said Troop B you  
22 believe right?

23 ANSWER: I believe its Troop B, yes.

24 QUESTION: And he came in to be the Director  
25 of Bureau Professional Responsibility right?

1 ANSWER: Correct.

2 QUESTION: Now have you ever learned what  
3 Ober supposedly did wrong if indeed he did anything  
4 wrong regarding that FBI investigation?

5 ANSWER: At some point I learned that the  
6 information that he had received either was not shared or  
7 it was shared at a much later date with his superiors.

8 QUESTION: Was he punished for that?

9 ANSWER: Not that I'm aware of.

10 QUESTION: Well if he did something wrong he  
11 should have been punished for it. Don't you think? I  
12 would think he should be.

13 ANSWER: Well a lot of people on our job do  
14 things wrong and they're not punished for it. It's not  
15 necessarily a case of... like I said... What do you mean by  
16 punishment?

17 QUESTION: I'm going to ask you that in a  
18 minute.

19 ANSWER: I know when someone says don't do  
20 that again. I don't consider that a punishment. I  
21 consider that direction and possibly counseling, but I  
22 wouldn't consider it a punishment.

23 QUESTION: Okay that's fair enough I'm sure.  
24 Well if you're put in a penalty box what's penalty box?  
25 What's that?

1                   ANSWER: My opinion of what they meant by  
2     penalty box, I haven't heard it for years, but it use to be  
3     an assignment to the academy. Basically you don't, you  
4     have an office and a phone and you're given some type of  
5     a project to work on. It could be something statistical,  
6     review policy, something to that effect. But you're  
7     basically without a staff and alienated to the point where  
8     you're not interacting with other members of the  
9     department.

10                  QUESTION: Your sort of an administrator  
11     without a portfolio.

12                  ANSWER: That's one way to put it.

13                  QUESTION: Now do you have a recollection of  
14     Captain. Ober being transferred down to or an attempt at  
15     least being made transferring to Washington County?  
16     Cause you had mentioned that on an earlier question.

17                  ANSWER: I don't know.

18                  QUESTION: In response to an earlier question  
19     of mine I think you had... I may not remember correctly  
20     so it's your memory that counts okay? I thought you had  
21     made a reference to a transfer.

22                  ANSWER: I did to transfer, but I don't know if  
23     it was Washington County. I thought it was to assist the  
24     Area Commander with his efforts in developing the plans  
25     for the National Governor's Association meeting up in

1 State College.

2 QUESTION: Who is that Area Commander?

3 ANSWER: Major Szupinka.

4 QUESTION: He needed help out there did he?

5 ANSWER: It was a large plan. I know it  
6 involved several Troop Commanders.

7 QUESTION: If I told you we developed  
8 information which indicates that he didn't need help or  
9 didn't request help would that surprise you? Do you  
10 have any fact to support, give any knowledge of that?

11 ANSWER: No I don't know either way.

12 QUESTION: All right. Are you telling us that  
13 you had heard that Captain Ober was sent to help Mr.  
14 Szupinka?

15 ANSWER: Yes

16 QUESTION: And is it your  
17 understanding that Captain. Ober requested that  
18 opportunity to go and help Mr. Szupinka.

19 ANSWER: No I don't know that he requested it.

20 QUESTION: Is it your understanding that  
21 he didn't request it?

22 ANSWER: Yes. Well I don't know.

23 QUESTION: Well you said yes sir. Now  
24 something popped up there. Something popped into the  
25 front of the that very fertile mind of yours and said you

1 know, yes. Why? What prompted that?

2 ANSWER: You had asked I believed the  
3 question before that was, was I aware that he had been  
4 requested. No and then you said something..

5 QUESTION: That he didn't

6 ANSWER: Did he request it.

7 QUESTION: No. I'd indicate that he  
8 didn't want it.

9 ANSWER: That he didn't want it, exactly.  
10 I don't know.

11 QUESTION: Did you hear anything about  
12 it?

13 ANSWER: After the fact I believed I had.

14 QUESTION: Tell me what you heard after  
15 the fact?

16 ANSWER: This is maybe again predicated  
17 on I believed there was newspaper article challenging the  
18 appropriateness of his transfer.

19 QUESTION: Okay, well you know he  
20 fought it right?

21 ANSWER: He what?

22 QUESTION: He fought it. You know that  
23 he fought it in court?

24 ANSWER: Yes. Yes.

25 QUESTION: Cause you read a newspaper

1 article.

2 ANSWER: Yes.

3 QUESTION: And you know that the State  
4 Police defended their actions. Be it unsuccessfully, but  
5 they defended their actions right?

6 BARBARA CHRISTI: Just for the record again  
7 because this keeps coming up. The State Police agreed  
8 not to transfer Captain. Ober. We successfully defended  
9 that action; in fact we won that action. It was dismissed  
10 on preliminary objections. Just so the witness, the  
11 attorney, everyone understands we agreed not to transfer  
12 him and there where certain stipulations that we're going  
13 to run into as a result of that. We did not lose that  
14 action. We successfully defended that action and in fact  
15 were granted a dismissal of that case.

16 MR BAILEY: Is it your understanding that the  
17 State Police in an act of grand and uncompromising  
18 generosity backed away from having Captain. Ober  
19 transferred to Washington. Is that your understanding?

20 CAPTAIN SKURKIS: My understanding is  
21 that the transfer was rescinded. I don't know if it was  
22 mandatory. I don't know if it was out of...

23 QUESTION: You don't know if they were  
24 encouraged to do so by any opinions or actions in  
25 the legalsphere.

1 ANSWER: Well I assumed based on

2 QUESTION: Or there was an act of love. You  
3 don't know?

4 ANSWER: No I don't know that.

5 QUESTION: So it could have been an act of  
6 love and kindness?

7 ANSWER: It could have been.

8 QUESTION: Could have been. But in any event  
9 we do know that Captain. Ober did not go to Washington.  
10 Is that correct?

11 ANSWER: I don't know if he went for a short  
12 period of time. I don't know. I don't know. I know  
13 eventually the transfer was rescinded. I don't know if it  
14 had already been effected and he was traveling and it  
15 dissipated. I don't know.

16 QUESTION: Now Captain Ober, he had been  
17 with IAD. Is that right?

18 ANSWER: That's correct.

19 QUESTION: And at some point he was working  
20 on an innovative technology project for the Pennsylvania  
21 State Police wasn't he? A information management kind  
22 of system?

23 ANSWER: Right he was detached to that  
24 position. I don't know what exactly his assignment was.

25 QUESTION: Well did he...I'm sorry.

1                   ANSWER: He was assigned over to our Bureau  
2 of Technology Services.

3                   QUESTION: Well at some point he became  
4 disengaged from the IIMS Project right?

5                   ANSWER: Yes.

6                   QUESTION: And he was sent back to IAD as  
7 Mr. Evanko had promised him right?

8                   ANSWER: I know he was at... I don't  
9 remember. If he was it probably wasn't for a very long  
10 period of time. I don't remember.

11                  QUESTION: Okay. Do you have a recollection  
12 of him requesting an opportunity to serve the  
13 Pennsylvania State Police in LCE?

14                  ANSWER: No.

15                  QUESTION: Do you have a recollection of him  
16 being transferred or assigned to LCE?

17                  ANSWER: Yes.

18                  QUESTION: And do you have a recollection of  
19 what he was assigned to do with LCE?

20                  ANSWER: To take a step back, you asked if I  
21 have a recollection of his requesting. Unless Captain.  
22 Ober told me that he had requested it. I am not in that  
23 chain of command. I would be unaware of any request.  
24 That's not something that would be publicized.

25                  QUESTION: Well the people talk and you know

1 you can hear it when...

2 ANSWER: Well I might have heard all kinds of  
3 things. I don't know really. I don't subscribe to rumor to  
4 the point where it's in one ear and out the other. There  
5 has to be something more than that. So I don't know of  
6 his application for the LCE, but I do know ultimately  
7 that's where he was assigned.

8 QUESTION: Do you know what he was  
9 assigned to do over...I'm sorry. Do you know what he  
10 was assigned to do over at LCE?

11 ANSWER: I believe there was a Lieutenant that  
12 was either under suspension at the time for misconduct,  
13 and Captain. Ober was assigned to that division. My  
14 guess is to take over the responsibilities of the  
15 Lieutenant.

16 QUESTION: Okay. Now um forgive because I  
17 was asking those LCE question and I got mixed up in my  
18 own mind about certain thing. You, you, different, one of  
19 those different questions forgive me. You know? You  
20 replaced Captain. Ober at something right? As I  
21 recollect.

22 ANSWER: Replaced him at something?

23 QUESTION: At some kind of duty or function?  
24 I can't remember off the top of my head what is was.

25 ANSWER: Yes

1 QUESTION: Okay. What was that?

2 ANSWER: In May of 1998, ah prior to May of  
3 1998 I was Director of Internal Affairs. Captain Ober was  
4 the Director of the Systems and Process of Review BPR  
5 Division. In May of 1998 our Bureau Director reassigned  
6 CPT. Ober to Internal Affairs and myself to the Assistant  
7 and Process of BPR Division. So effectively we swapped  
8 jobs.

9 QUESTION: Did you ever replace him at  
10 anything else?

11 ANSWER: No.

12 QUESTIONS: Where you ever appointed to  
13 PEMA?

14 ANSWERS: Yes.

15 QUESTIONS: Did you see him there?

16 ANSWERS: Yes.

17 QUESTIONS: Well how did you come to PEMA  
18 in place of Captain. Ober?

19 ANSWER: I was approached I would say  
20 around May of 2000. By one of my subordinates  
21 Corporal Marlin Leidig who was assigned to PEMA. And  
22 he encouraged me to apply for a vacancy at PEMA. I  
23 explained to him that back when I first made captain  
24 then Joseph Blackburn who was the Director of the  
25 Bureau of Inspectorial Emergency Operations asked me

1 to go into PEMA and I turned it down then. I wasn't  
2 interested and I said I wasn't interested now to Leidig.  
3 And he said he enjoys working with me. He thinks I  
4 would find it interesting. He filled me in a little bit about  
5 the details of what the job encompasses which at that  
6 point I really wasn't aware of exactly what was being  
7 done over there. I told him I would think about it and  
8 the matter dropped for several weeks. And he  
9 approached me and said hey have you made a decision  
10 yet? Actually I told him my decision was no, and we  
11 discussed a little further. And he said look you can put  
12 in if you don't like it. You can just get out. There's no  
13 strings attached it's free to go. I told him find out about  
14 what I would have to do to obtain the position. And he  
15 came back several days later and told me to do  
16 correspondence to the Director of the Bureau of  
17 Emergency Inspection Operations and express and  
18 interest in it along with some personal data.

19 QUESTION: Who was that?

20 ANSWER: That would have been, at the time  
21 Major Leonard Washington.

22 QUESTION: Colonel or excuse me. Is Mr.  
23 Wescott involved in that at all?

24 ANSWER: I don't believe so.

25 QUESTION: Do you ever talk with Mr. Wescott

1 about it?

2 ANSWER: No.

3 QUESTION: Do you know if Mr. Washington  
4 ever talked with Mr. Wescott about it?

5 ANSWER: No I don't.

6 QUESTION: Well one of the problems with  
7 PEMA is that it causes you a lot of unreimbursable out of  
8 pocket expenses though. Doesn't it?

9 ANSWER: There it taxes your getting your job  
10 done. Then you get paid don't you?

11 QUESTION: But you get paid. If you get paid  
12 do you get any overtime pay for that or anything?

13 ANSWER: In the event of an activation,  
14 depending on the duration of the activation there's a  
15 potential for overtime yes.

16 QUESTION: How long have you been on  
17 PEMA?

18 ANSWER: I believed I never received any type  
19 of correspondence as far as a starting date. But I got a  
20 phone call from Captain. Davis, who was the department  
21 Emergency Operations Officer sometime in June saying  
22 that I was selected, approved for. I don't what the term  
23 he used for PEMA. And would I be interested in going to  
24 a one day training exercise at PEMA, which was  
25 scheduled for the later part of that month.

1 Accompanying him to that training, and I said yes.

2 QUESTION: All right. Well what do you... have  
3 you ever had gotten anytime in on PEMA that you were  
4 paid for? Anytime that you gave to it?

5 ANSWER: Yes I did.

6 QUESTION: Okay. How much for the year?  
7 You know let's say the first year we're there. How much  
8 money did PEMA put in their pocket?

9 ANSWER: The first year I was there I had a  
10 total of four hours overtime.

11 QUESTION: Not much uh?

12 ANSWER: No.

13 QUESTIONS: Okay. What about since then?

14 ANSWER: Since September 11<sup>th</sup> I would  
15 estimate somewhere between thirty and forty hours of  
16 overtime.

17 QUESTION: Okay. Is that largely due to the  
18 September 11<sup>th</sup> events?

19 ANSWER: Right. And I consider that very  
20 abnormal.

21 QUESTION: Yeah I thought you would say...

22 ANSWER: In fact I didn't appreciate the  
23 amount of time I had to spend over there. It wasn't  
24 worth it to me let's put it that way.

25 QUESTION: Would you say that the kind of

1 person that works for PEMA is somebody that's typically  
2 motivated or interested in that type of duty? That's a  
3 sacrifice to some extent?

4 ANSWER: I believe it is a sacrifice.

5 MR BAILEY: Hold on just one-second sir.

6 QUESTION: Okay. In what ways is it a  
7 sacrifice?

8 ANSWER: Well for one thing you're sharing a  
9 lot of your work time. Basically simulating additional  
10 work and not getting any extra pay for it. And when I say  
11 work I mean going to training, attending informational  
12 meetings, just being on call two weeks out of three  
13 weeks. I'm somewhat restricted as to where I can go and  
14 what I can do because I'm on an on call status with  
15 PEMA.

16 QUESTION: So the on balance, assisting with  
17 PEMA on balance is a sacrifice that you do for the good of  
18 the State Police because you care about the organization  
19 which you're a part. Is that what you're telling us? I  
20 mean are you in effect saying that....

21 ANSWER: In my case?

22 QUESTION: Sure in your Case. Why do you do  
23 it? Do you do it because you care? Do you do it because  
24 you want the overtime? Do you do it for both reasons?  
25 Obviously there's not much overtime. Why do you do it?

1                   ANSWER: Well in my case, there's a concern  
2 for the department of course, but also I find that  
3 interesting. I wanted to learn more about emergency  
4 operations. And as a department, headquarters with a  
5 department or headquarters assignment you don't get the  
6 exposure to field activities that a Troop Commander, a  
7 Captain of in the field would get. This is the closest thing  
8 that I can personally experience without transferring into  
9 a troop. As far as an operation field operation?

10                  QUESTION: Well its career enhancing in the  
11 sense that it's a good qualification and experience to have  
12 on your career resume. Isn't it? I mean it certainly has to  
13 be positive to some degree in that regard or does it hurt  
14 you?

15                  ANSWER: I don't think.... I don't know that  
16 anyone would consider it further into your career saying  
17 well that person. We have two people here that are the  
18 same in all respects, except the person was assigned to  
19 PEMA. Let's choose that person. I don't think it's going  
20 to help there. Now possibly if you sought employment  
21 outside of the department. That's something on a resume  
22 would enhance your stature.

23                  QUESTION: But you do it because you want to  
24 have the experience that it offers you. And because based  
25 upon your knowledge and experiences with the

1 Pennsylvania State Police it gives you an exposure to  
2 things that you want to do. But you feel enhance your  
3 opportunity to enjoy your employment experience. Now  
4 that's what you've just described for me or am I  
5 incorrect?

6 ANSWER: I think what you're....

7 QUESTION: I'm looking for your reasons.

8 ANSWER: Look my reasons are I find it interesting.

9 QUESTION: Captain you originally started  
10 telling me how reluctant you were to do this.

11 ANSWER: Right.

12 QUESTION: That you considered it a burden  
13 and that you had a friend and somebody who had  
14 admired you and respected you. And I'm not over doing  
15 it, but I mean. Said hey you'll be good at this and  
16 apparently believed that you where need there or they  
17 would have approached you and thought that you would  
18 be a good person for that job. And also thought that  
19 once you were exposed to it you would like it. How long  
20 have you been there?

21 ANSWER: It will be two years in June.

22 QUESTION: How many times have you asked  
23 to quit, resign, or be transferred from it?

24 ANSWER: I have not been.

25 QUESTION: No. Because you have found it to

1 be something that you have enjoyed. And you find it to  
2 be something that has in fact been a learning experience  
3 for purposes of your Pennsylvania State Police career.  
4 Am I correct? Or am I wrong? I'm not trying to blow it  
5 out of...

6 ANSWER: I think you're wrong with that. I've  
7 never looked at it as a career enhancing. In fact I'll be  
8 frank, I don't expect to ever go beyond the rank of  
9 Captain. That's not... I see people

10 QUESTION: You're not ambitious to go beyond  
11 the rank of Captain.

12 ANSWER: Well I see a lot of people that are  
13 ambitious ultimately do a disservice to the department.

14 QUESTION: Why?

15 ANSWER: Because their motivation is simply  
16 to take care of themselves. That's not my motivation  
17 everything I do...

18 QUESTION: Is that common with in the state  
19 police?

20 ANSWER: Yes I would say it is common.

21 QUESTION: Why? Why Captain? Who's built  
22 that environment into the Pennsylvania State Police?

23 ANSWER: I don't know.

24 QUESTION: Had it been the leadership or has  
25 it been the troopers out there that did it?

1                   ANSWER: I think it's common sense. It's not  
2 the State Police. I don't know that the State Police is any  
3 different in a comparative ratio then IBM.

4                   QUESTION: Captain Skurkis is Evanko  
5 responsible for it at all?

6                   ANSWER: Responsible for what?

7                   QUESTION: Captain. Skurkis is it too much  
8 politics involved in the job in the State Police? Is that  
9 what you are trying to tell us?

10                  ANSWER: No just I have no aspiration to go  
11 beyond the rank of Captain.

12                  QUESTION: I don't mean you sir. I'm talking  
13 about your observations about the State Police and what  
14 happens. Is there a problem internal in the Pennsylvania  
15 State Police with too much political infighting?

16                  ANSWER: As I began to say before, I  
17 personally do the things I do for the department strictly  
18 for the bettering of the department. I'm not looking to  
19 favor myself,

20                  QUESTION: I don't question that. I don't  
21 question that sir.

22                  ANSWER: Well that's what I was trying to say.

23                  QUESTION: Did you pick it up from?

24                  ANSWER: What I am saying is that I don't have  
25 motivation like whole lots of others may have. I'm gonna

1 do this cause I'm gonna be in a better light to get  
2 promoted.

3 QUESTION: Precisely and I believe you sir.  
4 And if I understand you correctly what that means is you  
5 seen people. You know by the way I'm gonna let you off  
6 the hook cause I'm not gonna ask you who. But you're  
7 telling me and the fact that you have seen this kind of  
8 ambition within the State Police has perhaps done harm  
9 to the organization. That's what you seem to say to me.  
10 Is that correct?

11 ANSWERING: I'm saying that I don't know it if  
12 has done harm. I'm saying though in my case that's not  
13 my motivation.

14 QUESTION: It's not for you.

15 ANSWER: Right it is not for me.

16 QUESTION: It's not for you. And you did say  
17 and you did indicate however that there are problems in  
18 the State Police or have been with that type of thing?

19 ANSWER: No I'm saying that there are people  
20 in the State Police that probably would find a motivation  
21 for promotion to be a overriding career incentive.

22 QUESTION: Okay. And is it your view that  
23 people that put their duty and responsibility second.  
24 They set that aside and instead advance their personal  
25 interest. That that's a wrong thing to do?

1                   ANSWER: Well some people can do it. It can  
2 be beneficial to both. But I find that I know in my case  
3 strict dedication to the job. No concern about am I gonna  
4 step on someone toes? Am I gonna say something wrong  
5 to someone? I'm not concerned about that. I'm gonna do  
6 my job and I'm doing it the best. I'll tell people if they're  
7 wrong if I feel they're wrong, and not worry that there's  
8 gonna be repercussions of hey you can't tell that Major  
9 that. Hey, if the Major's wrong I'm gonna tell the major I  
10 feel in my opinion that what he's doing is wrong

11                   QUESTIONS: That's called candor right?

12                   ANSWER: True.

13                   QUESTION: It's called being open and being  
14 honest right? And that's what you meant when you had,  
15 in response to earlier questions, indicated that in a  
16 situation where somebody came to you and revealed the  
17 contents of an investigation. Where you said your duty  
18 and responsibility would be not to inform a target of an  
19 investigation. Because that might violate a law or that  
20 might compromise the integrity of an investigation.  
21 That's the same type of thing isn't it? The right thing to  
22 do. Isn't it Capt. Skurkis?

23                   ANSWER: If you're saying that one has  
24 knowledge that an individual is a target of investigation  
25 and to intentionally go to that target and share

1 information that you know about the investigation. Yes  
2 that's wrong.

3 QUESTION: Or even that the investigation  
4 exists, tipping them off.

5 ANSWER: Correct

6 QUESTION: Yes sir exactly right. I'm right  
7 with you. Okay. Now you've been with PEMA roughly two  
8 years?

9 ANSWER: Yes.

10 QUESTION: And in that two year period of time  
11 if we were not going to include those maniacs on that  
12 September 11<sup>th</sup> if that's excluded and that's out of the  
13 way. Aside from that particular tragedy, you may be  
14 talking less then ten hours of PEMA activity a year. You  
15 think or..

16 ANSWERS: When you say ten hours you mean  
17 ten hours of..

18 QUESTION: I really don't know that much  
19 about it to be honest with you.

20 ANSWER: Well a nah there's more. I would  
21 say more like...

22 QUESTION: Let's say on a given month. Is  
23 there an average on a month?

24 ANSWER: No it basically amounts to training  
25 and whether you want to avail yourself to that training.

1 Those training meeting exercise at Three Mile Island  
2 tomorrow night. There's gonna be an exercise at Three  
3 Mile Island is in peril. Would you be available to go to  
4 training? If you chose to do that it would be an eight-  
5 hour shift. That's eight hours right there.

6 QUESTION: Of additional time?

7 ANSWER: No.

8 QUESTION: Is that additional or promised?  
9 Like a flex kind of thing.

10 ANSWER: No. No. So in other words instead of  
11 my working in my office that day, seven to three, or  
12 eighty to four. I'd be working at PEMA from three to one.  
13 So it would be eight hours away from my office, but not  
14 in any additional premium pay.

15 QUESTION: Thank you. Okay. I under stood  
16 that after you explained that.

17 ANSWER: And as I said if you excluded  
18 October 11<sup>th</sup>. In two years my overtime happened to be  
19 four hours.

20 QUESTION: Alright. So in a word it's not  
21 required?

22 ANSWER: What's not required?

23 QUESTION: The training the different things.  
24 They're elective. In other word you can choose to go.

25 ANSWER: Yes. I don't know of anything that

1 says you must go to this or go to that. It's a question of  
2 do you want to fool of yourself in the event something  
3 happens and your totally out there with no direction at  
4 all. I don't want to be in that position so I will go to the  
5 training when it's available. I don't go to every training,  
6 but I've probably gone to four exercises over this two-year  
7 period so far.

8 QUESTION: Okay. Who makes the ultimate  
9 assignment to PEMA within the Pennsylvania State  
10 Police? I mean if PEMA is an outside state police  
11 organization right?

12 ANSWER: Right.

13 QUESTION: Headed up by the Governor or  
14 somebody. But the point is that it's outside the  
15 Pennsylvania State Police. You'd be like a Pennsylvania  
16 State Police Participant or designee or something of that  
17 sort right?

18 ANSWER: The technical term is liaison.

19 QUESTION: Okay, liaison

20 ANSWER: From the Pennsylvania State Police  
21 to other representatives to PEMA.

22 QUESTION: I see. Who appoints to that  
23 position? Is it the Commissioner ultimately? Or who  
24 does that?

25 ANSWER: Actually I thought it was Captain

1 Davis and his Major the Director of the Bureau of  
2 Emergency Inspection Operations.

3 QUESTION: But you don't know for sure?

4 ANSWER: No I don't.

5 QUESTION: Now normally in BPR, a BPR  
6 number is assigned when an investigation arises right? I  
7 mean whenever there's an investigation launched or what  
8 not.

9 ANSWER: When a well... What by launched?  
10 Knowingly it's just lined after a complaint worksheet is  
11 prepared.

12 QUESTION: Okay.

13 ANSWER: It is not normally assigned until that  
14 worksheet is prepared, because that's the tracking  
15 number.

16 QUESTION: Yes that's a worksheet. And when,  
17 I wanna just ask you a couple questions. I wanna keep  
18 your investigation closed down. How does it close down?  
19 What happens?

20 ANSWER: Closes down?

21 QUESTION: Yeah. When it closes down.  
22 When it stops.

23 ANSWER: The investigation is terminated upon  
24 the last relevant interview and the preparation of the  
25 report.

1 QUESTION: Is a person as the object of a BPR  
2 investigation suppose to be informed when it's closed or  
3 done?

4 ANSWER: You mean the subject of the  
5 investigation? You said the..

6 QUESTION: Subject object yah whatever.  
7 Subject that's a good word go ahead.

8 ANSWER: The subject of the investigation  
9 upon adjudication is notified. The adjudication is not to  
10 me an investigative step. You asked the question about  
11 when is the investigation over. The investigation's over  
12 when the report's done. There are additional  
13 administrative steps that we take after that. Which  
14 require outside of the room of the Internal Affairs  
15 Division.

16 QUESTION: I understand. In other words  
17 there's an investigation, but let me then withdraw my  
18 question and come back with a different question. After  
19 the adjudication is a person suppose to be told?

20 ANSWER: The results of an adjudication  
21 should be communicated to the subject in the best case.  
22 Yes.

23 QUESTION: Is there any duty or obligation to  
24 inform a person. This might be a rather silly question. I  
25 assume most of this investigation are Internal Issue they

1 can interview a person so they're going to know anyway,  
2 but is there any formal process of notifying. That  
3 requires notifying a person that they're being investigated  
4 or going to be investigated?

5 ANSWER: The regulations indicate that if an  
6 individual is identified as the subject of an investigation.  
7 That they are to be provided with a notification of inquiry.  
8 That document basically tells the individual that an  
9 investigation is being conducted, and it may touch on  
10 areas of their conduct, which are subject to the inquiry.  
11 Now the regulations say that shall be presented to the  
12 subject as soon as possible. Normally it occurs at the  
13 time of the interview. When the person shows up for the  
14 interview after direction of the investigator. They're given  
15 this piece of paper which is the Notification of Inquiry.  
16 There it's laid out the fact that there's an investigation  
17 being conducted and that whatever interview of their  
18 participation or non-participation in this conduct is  
19 what's being looked at.

20 QUESTION: And it has a number on it right? I  
21 mean, the number's a sign they put on there and they're  
22 given it right?

23 ANSWER: There's a provision for the number,  
24 but I know of cases where let's say a shooting happens in  
25 the night. I'm going to respond as an investigator and

1 interview the participants. I don't have a number but I'm  
2 gonna give them that document telling them that this is  
3 why I'm talking to you and this is why we're speaking.  
4 So I would say no it's not an absolute.

5 QUESTION: What position do you hold now?

6 ANSWER: Corrector of System and Process  
7 Review Division.

8 QUESTION: Do you know of any outstanding  
9 BPR's on Captain. Ober? As we sit here today?

10 ANSWER: No I do not.

11 QUESTION: But you wouldn't necessary know  
12 if there where one?

13 ANSWER: That's no I wouldn't. You're correct?

14 QUESTION: Have you ever seen an  
15 investigation into somebody in the Pennsylvania State  
16 Police without a reason? Now this may be rather basic  
17 to you so don't please don't rebel, in the sense that. You  
18 know have you ever seen an investigation done just to get  
19 something on somebody without having a reason to do it?

20 ANSWER: No.

21 QUESTION: That's pretty basic to any  
22 investigator, to any member of a democratic society with  
23 a small bee. That's pretty much common sense. Well  
24 maybe it's not?

25 ANSWER: Well nah I'll say this. Being on

1 board with BPR since day one I'd like to support the fact  
2 that that's why BPR was created.

3 QUESTION: To prevent that kind of abuse  
4 right?

5 ANSWER: Right

6 QUESTION: And to provide a procedure so that  
7 members of the Pennsylvania State Police know that  
8 there is a policy and procedure that governs  
9 investigations into them and their rights as a member of  
10 the organization of Pennsylvania State Police right?  
11 That's what it's about. Isn't that correct.

12 ANSWER: That's part of it.

13 QUESTION: And the organization has been in  
14 existence I guess formally for...it's only been about ten  
15 years or so? Maybe ten fifteen years?

16 ANSWER: Ah 2002 would be the sixteenth  
17 year.

18 QUESTION: It's not really that old. The  
19 sixteenth okay. It's not really that old. Given the fact  
20 that the agency was one of the first. And admittedly I'd  
21 be the first one to doubt your reputation on the street  
22 corner. One of the finest state departments of it's type  
23 since what 1905?

24 ANSWER: That correct.

25 QUESTIONS: So it's not a place that is

1 designed to foster or tolerate abusive people, particularly  
2 members right. And that's one of the reasons BPR came  
3 into existence. As you told us.

4 ANSWER: That's one of the reasons.

5 QUESTION: Additionally there are probably  
6 three overriding reasons. The one that you had  
7 mentioned. The second is protection of the public. And  
8 the third is protection of the department. And the  
9 protection of department is something that's frequently  
10 over looked, but I believed it spelled right in 425 that's  
11 it's to determine the process helps to determine the  
12 performance inadequacies that occur at different levels  
13 What I've in past and know again being partly an author  
14 of 425. What is meant by that there are instances that  
15 may not raise to the level of misconduct. Yet the  
16 department has invested interest in investigating it

17 QUESTION: Sure incident for example.

18 ANSWER: Pardon me?

19 QUESTION: Incident for example. Let's say  
20 there... Well can I can I give you an example? There's  
21 been a discharge of a firearm.

22 ANSWER: Right okay there again there nothing  
23 wrong but the person

24 QUESTION: Well we don't know that..

25 ANSWER: You don't know that, but

1 QUESTION: But it's an incident.

2 ANSWER: We are investigating it to look into  
3 the fact. Was this shooting legal? Was it in accordance  
4 with regulation? And then, of course, there's an  
5 overriding interest in gathering evidence at the time in  
6 the event that some civil action is taken later on. You  
7 what to get whatever is available and preserve that to  
8 whether it answers you defense or actually serves to  
9 prove that the shooting was in fact a proper and the  
10 victim was in the shooting.

11 QUESTION: Okay would you know how  
12 requested if indeed anybody did the investigation into  
13 CPT. Ober?

14 ANSWER: Do I ah...

15 QUESTION: Where did it originate?

16 ANSWER: No I've never seen. Normally that  
17 information would be a part of the complaint worksheet.  
18 In the complaint block. I've never seen the worksheet so  
19 I don't know and nor have I have seen the investigation  
20 for that matter. So I don't the actual complaint is. Well I  
21 don't know that. There was an investigation done really.  
22 There was. I don't know if it was IAD investigation? I  
23 don't if it was a criminal investigation? I don't know if it  
24 was a supervisory type of investigation? I know  
25 something was looked at, but I don't know ultimately

1 exactly what.

2 QUESTION: Were you ever interviewed in  
3 connection with CPT. Ober's, I know I still don't know  
4 what to call it. After three or four months of depositions I  
5 don't know what to call it yet. Whatever it was. You  
6 have a recollection of discussing the investigation of  
7 Captain. Ober with anyone? Now for example go down  
8 the list of defendants very quickly if I may? Is it fair to  
9 say you probably never a... Have you the issue of  
10 Captain. Ober with Mr. Evanko?

11 ANSWER: No.

12 QUESTION: Have you ever discussed Captain.  
13 Ober with Mr. Wescott?

14 ANSWER: No.

15 QUESTION: How about Mr. Williams or Mr.  
16 Wertz?

17 ANSWER: Yes.

18 QUESTION: Tell me about it.

19 ANSWER: Sometime of 1999 Major Williams  
20 and Major Wertz were at the BPR offices here in  
21 Harrisburg. I don't know what their agenda was. I don't  
22 even know why they were there except they were in our  
23 kitchen/ conference room reviewing reports. I believe  
24 they may have been transcripts. In Fact that's what I  
25 subsequently found out that they were there to look at

1 transcripts. In any event, I had gone into the room to get  
2 a cup of coffee and Major Williams asked me a question  
3 regarding investigative procedure for IAD. Now again he  
4 was aware that I had been in IAD for fourteen years and  
5 that I would be familiar with it. Where as a I think he  
6 joked that his only involvement was in his addictions.  
7 And he really had never conducted any IAD  
8 investigations. I don't know how said what, I remember  
9 that my advise to them was that an investigation, an IAD  
10 investigation could be conducted into the circumstances  
11 of an incident. One member misconduct is involved. Or  
12 number two if the commissioner, well three I guess it  
13 was. If the commissioner directed IAD to look into  
14 something. Or number three if department directive  
15 dictated that IAD investigated certain circumstances.

16 QUESTION: Stop right there. If existing  
17 regulations indicated that the IAD is to check into  
18 something I assume that IAD's gonna check into it if it's  
19 brought to their attention. Right?

20 ANSWER; Again it depends on what is and  
21 who brings it to their attention.

22 QUESTION: Okay but the fact is that if  
23 regulation provide that IAD either evaluates or initiate  
24 some action it's fair to assume you follow the regulations.  
25 Right?

1 ANSWER: Right. Correct.

2 QUESTION: So that was the one incident, and  
3 there are one incident and where you pointed that out  
4 right?

5 QUESTION: Where did regulations give the  
6 Commissioner power to initiate and direct investigations?  
7 I'd like to know that is.

8 ANSWER: Direct investigations?

9 QUESTION: Well I don't know what he's doing.  
10 You told me you told them. I want to know what that  
11 means because let me tell you where I'm coming from.  
12 I've looked till I'm blue in the face and I'm sort of an  
13 ideologue on issues like Constitutional Rights. I'm a  
14 idealist on these kinds of things and I study them a lot,  
15 probably more then most. I don't know where the  
16 Commissioner gets this power that you mentioned  
17 towards the Williams. And I'd like to know where it is.  
18 And I'm not saying it isn't there I honestly don't know.  
19 Can you tell me where it is?

20 ANSWER: Actually I again I think I was  
21 somewhat instrumental in getting that authority to  
22 commissioner. It was Commissioner Cochran at the  
23 time. When we were developing. There was a special  
24 order anywise eighty-five....

25 QUESTION: Now what's a special order?

1           ANSWER: A special order is a department  
2 directive, which provide guidance with regard to what  
3 action to be taken under certain circumstances. And  
4 what actions not to be taken under certain  
5 circumstances.

6           QUESTION: Okay what's the number on this  
7 special order?

8           ANSWER: It was I think it was 85111.

9           QUESTION: 85111 okay now you say were... I  
10 mean how do you give the commissioner power? If I  
11 understood you correctly. How do you do that?

12           ANSWER: Well we have meeting in the  
13 development of the Bureau of Professional Responsibility.  
14 We needed a document that gave us the authority.  
15 Basically the creation of the Bureau of the Professional  
16 Responsibility. It can't just appear from no where. So it  
17 was created by virtue of this special order. And I  
18 remember on of Colonel Cochran's concerns he was not a  
19 member of the state police prior to being appointed  
20 commissioner. He came form the FBI into the  
21 department.

22           QUESTION: Who a this is Commissioner  
23 Cockren?

24           ANSWER: Correct. What he found was there  
25 were a lot of issues. For example a lawsuit being filed

1 about conduct that members where involved in a year  
2 before two years or whatever the time limitations allowed.  
3 And that when he would go to find information regarding  
4 what had occurred there's no record. There's no  
5 investigation. None of this was ever looked at.

6 QUESTION: Say what's that? Okay,

7 ANSWER: I don't think that has to do... Well  
8 he was concerned that as Commissioner he should be  
9 aware of what's going the department.

10 QUESTION: Absolutely.

11 ANSWER: And if he's not made aware of it.  
12 Then it should be investigated and preserved in a report  
13 somewhere that in the event three years from now this  
14 becomes an issue it can be retrieved and the information  
15 has already been recorded. I would say that was the  
16 major impetus for the creation of the Bureau  
17 Professional Responsibility/ Internal Affairs Division. In  
18 drafting this special order

19 QUESTION: Can we explore that for just a  
20 momment?

21 ANSWER: Okay we're gonna lose.

22 QUESTION: All right then you go ahead.

23 ANSWER: I think we've been cut in to four or  
24 five times here. That I don't know. I'm not answering  
25 your questions from way back.

1 QUESTION: Okay that's fair enough. You go  
2 ahead?

3 ANSWER: With the creation of the Bureau  
4 Professional Responsibility there were circumstances  
5 outlined where an investigation must be conducted on  
6 member conduct. That is misconduct, violation of rules  
7 and regulations, and shooting in cities. There was also  
8 determined that there would be citations where the  
9 Commissioner would like to know the circumstances of  
10 what occurred even though it doesn't necessarily fall into  
11 the realm of those two perimeters. Meaning shooting  
12 incidents or misconduct. One example that comes to my  
13 mind was the suicide of Bud Dwyer. Commissioner  
14 Cochran called over and asked then myself and then  
15 Captain. Shaffer go down to the capitol and look into the  
16 events that occurred down there. And we did. And that  
17 would have been in my opinion under the authority  
18 granted by that special order, and to take it a step  
19 further AR-4.25 replaced a special order.

20 QUESTION: What occurred in Bud Dwyers  
21 death that would cause the commissioner know what  
22 happened?

23 ANSWER: I don't know. All I know is he  
24 directed us to go down there and make our presents  
25 know. Then look into what was going on and report back

1 to him, and we did. In any event that was then. Today  
2 we have AR-4.25.

3 QUESTION: Before we leave the Bud Dywer  
4 thing we'll come back. Well ah we'll come back to that  
5 Bud Dywer thing.

6 ANSWER: Well I'm giving that to you as that  
7 this thing hasn't been created overnight. This authority  
8 of the Commissioner. It was invested back then, but it  
9 is codified in AR-2.45.

10 QUESTION: What do you mean it's an  
11 authority of the commissioner?

12 ANSWER: Again, I'm not answering your  
13 question. You keep changing the question. The  
14 questions here where does this authority for the  
15 commissioner do this? I'm about to get there.

16 QUESTION: It's still the question

17 ANSWER: Okay

18 QUESTION: Okay that's all I'm asking.

19 ANSWER: AR-4.25 I don't have copy with me  
20 and I don't know the section off hand, but it identifies  
21 criteria under which an investigation would be  
22 conducted. And one of those issues I think it's the last  
23 very last thing. Is at upon request of the commissioner.

24 QUESTION: Of who?

25 ANSWER: Internal Affairs well it say. I believe

1 that the caption's under an administrative investigation  
2 shall be conducted when, and then lists, ten or eleven  
3 items the last one of which is upon the request of the  
4 commissioner.

5 QUESTION: So.

6 ANSWER: So to me that's one of the accepted  
7 of the administrative investigation can be conducted even  
8 though on it's face there isn't or there isn't a shooting  
9 incident or an accidental death or there are a lot of other  
10 criteria, but

11 QUESTION: So if the commissioner wants to  
12 investigate, why Bud Dwyer killed him self over  
13 something astensably Mr. Tornburn had supposively  
14 done he can look into it. He can say I want you guys to  
15 go check it out. Right? If that's what his reasoning is.

16 ANSWER: Well I don't know what his  
17 reasoning was.

18 QUESTION: Exactly sir. And that's why I  
19 asked the question the way I did. Not to offend.

20 ANSWER: But the regulations don't require  
21 him to tell us what his reasoning was.

22 QUESTION: Thank you.

23 ANSWER: But it gives him the authority to  
24 request one.

25 QUESTION: He has the authority to do it if he

1 wants too? Whether that thing gives him authority or  
2 not? Now what are you going to do if you don't think, if  
3 you're sitting their sir. Captain. Skurkis you're sitting  
4 there and let's say you don't think the commissioner has  
5 authority to ask you to go down and investigate the  
6 assination of John F. Kennedy, but he tells you do did  
7 it. Now You're gonna do aren't yah?

8 ANSWER: As an Internal Affairs investigation  
9 or as an investigator?

10 QUESTION: I don't know sir.

11 ANSWER: Well I'm not asking a Internal Affairs  
12 investigator absent that caption in the regulation that  
13 says he's allowed to ask for one. I would say no. Then it  
14 would only be done on the cases of misconduct or  
15 department directory.

16 QUESTION: Exactly

17 ANSWER: That extra thing allows him to make  
18 a request and that the process be

19 QUESTION: Well he doesn't have to come to.

20 BARBARA CHRISTI: Excuse me could the  
21 witness just finish his answer cause I think... I don't  
22 know maybe you were finished.

23 ANSWER: Well no I'm not.

24 MR. BAILEY: I'm sorry

25 ANSWER: I also believe that the ah...We

1 certainly when we incorporated the into the regulation we  
2 did not expect that so purifies investigations would be  
3 done. I mean if the commissioner requested it then he  
4 can use the resources of the Internal Affairs for a reason  
5 other then an obvious misconduct investigation or an  
6 obvious investigation that's required to be a Director.

7 QUESTION: You done?

8 ANSWER: Yes.

9 QUESTION: What do you mean by that? I  
10 don't understand what you mean? Do you mean that if  
11 the commissioner wanted to come and ask to use  
12 Internal Affairs Division resources to investigate some on  
13 or something? He doesn't have to give you a reason. He  
14 can just ask you to do it and you'll do it. It that what you  
15 mean?

16 ANSWER: No. I think that would have to be  
17 some type of bases behind the request.

18 QUESTION: Sir I can't tell yah how I appreciate  
19 that response, and I apologize to you because the times  
20 that I have interrupted you I was trying to jump to that. I  
21 sort of thought that all that process that you were talking  
22 about was for that reason and I apologize to you for  
23 interrupting you.

24 ANSWER: You go ahead.

25 QUESTION: Do you have something else you

1 want to say.

2 ANSWER: Yeah I do. Now let me give you an  
3 example of that. Of course if the commissioner, if this  
4 investigation would be in some way determined to an  
5 illegal investigation. In other words go wiretap, my wife  
6 is having an affair. I want you to go and follow this guy  
7 around. No. That would be excluded. I would say that it  
8 would mean coming upon him to show that somehow the  
9 department either is, that this has to impact somehow on  
10 the department, this investigation. In other words for the  
11 good or for the bad that there are some repercussions  
12 some event that has taken place or should have taken  
13 place that didn't and as a result ultimately is plenty  
14 impact upon the operation of department.

15 QUESTION: Yes sir, absolutely. And what you  
16 meant in the sort of a additional response you do just a  
17 minute ago, we know what meant was, I assume, that the  
18 commissioner can't come to you for example the  
19 wiretapping example that you gave. The commissioner  
20 can't come to you and say hey Skurkis ah I don't have a  
21 warrant or anything. I want you to do me a favor. Go  
22 wiretap my wife's phone cause I want to find out want  
23 he's doing. I mean the bottom line there is in a  
24 ridiculous hypothetical, you would be. The request  
25 would be made or you to do something illegal or even

1 criminal and therefore it's improper, and you don't have  
2 to do that right? In fact you wouldn't do it. Absolutely  
3 Not!

4 ANSWER: And I'll tell you that if you look in  
5 4.25 the word is request. It doesn't say at the direction  
6 of. It says at the request of. That allows the Internal  
7 Affairs Division to evaluate the propriety of is this  
8 investigation in anyway germane to the operation of the  
9 department. Or is this at the personal pleasure of the  
10 commissioner or something else. Again it adds at that  
11 level of checks or balances there. That the commissioner  
12 can't just order you that he may request that the Internal  
13 Affairs Division initiate a new investigation.

14 QUESTION: Well at the time, I'm sorry where  
15 you done?

16 ANSWER: And one time the fact what he does  
17 makes it more then just his decision. You know he may  
18 be the cabalist, but other superiors would have to be in  
19 agreement with conduction this investigation. I mean  
20 he's the Director of the Bureau Professional  
21 Responsibility.

22 QUESTION: Okay so what your telling me then  
23 Major Conley appointed Mr. Wertz and Mr. Willaims to be  
24 investigated.

25 ANSWER: Uh I don't know that.

1 QUESTION: Well you would assume that he  
2 did

3 ANSWER: No not necessarily.

4 QUESTION: Well then the commissioner  
5 appointed them? Could he appoint them?

6 ANSWER: I don't know what appoint, assign is  
7 usually the term we don't ever appoint people to do an  
8 investigation, we assign them.

9 QUESTION: I'm sorry sir. I'll use the use the  
10 word assignment

11 ANSWER: And the assignment like in the case  
12 of a troop let's say the troop member does something  
13 wrong. The troop commander may assign the  
14 investigation. It would be at the concurrence of the  
15 Director of BPR, but the Director of BPR doesn't miss so  
16 he assigned investigator.

17 QUESTION: So as you sit here today you're  
18 assuming that Mr. Evanko concurred consulted and  
19 there was a concurrence with Major Conley to appoint,  
20 I'm sorry assign Mr. Wertz and Mr. Williams, the  
21 investigators, In the Ober matter. Now you're assuming  
22 that.

23 ANSWER: No I'm not assuming that cause I  
24 don't know if the commissioner had anything to do with  
25 it. I don't how the investigation started.

1 QUESTION: I know. Sir, I realize that, bare  
2 with me.

3 ANSWER: We've taken quantum leaps here,  
4 that apparently things you're saying, I don't really know  
5 that to be a fact.

6 QUESTION: I'm not amnesia? You're child of  
7 BPR. You're a lot of years of experience with BPR and  
8 you're a fact witness here. I'm asking you those  
9 question. I'm not assuming you know the answers to  
10 those things. I happen to maybe know some things that  
11 maybe you don't hear.

12 ANSWER: I guess you do?

13 QUESTION: Well okay, in fairness to me now.  
14 The reason I'm asking the question to learn from  
15 somebody who has more expertise then I do about BRP  
16 and how it functions

17 ANSWER: And that's fine.

18 QUESTION: The assignment, you don't know  
19 how Mr. Williams and how Mr. Wertz came to be  
20 assigned.

21 ANSWER: No I do not.

22 QUESTION: Now could Colonel Coury assign  
23 them to investigate Captain Ober without the  
24 concurrence of BPR?

25 ANSWER: It's possible. Do I know that is ever

1 been done the past? No I don't

2 QUESTION: You don't know that it hasn't been  
3 done

4 ANSWER: No I don't. Well I know that up until  
5 May of 98 I think I'm quite formulary with IAD operated  
6 and BPR. And during that ten years I don't know of any  
7 case where the commissioner or any deputies assigned  
8 investigators. Now the subject of the investigation has a  
9 lot to do with whose being assigned. Normally it's at least  
10 an equal rank; well I shouldn't say that often is an equal  
11 rank or a superior person being investigated. MR  
12 BAILEY: Okay sir. Thank you.

13 MR BAILEY: Okay. Captain Skurkis, your  
14 now running an investigation of the book? Is there any  
15 such term?

16 ANSWER: Running it off the book?

17 MR BAILEY: Yeah.

18 ANSWER: I don't know ...

19 QUESTION: Well you have made reference to  
20 the possibility, at least at a relatively low level, that there  
21 can be some type of investigation. I hesitate to use that  
22 word, maybe inquiry or something. Let's say a Field  
23 Commander of a situation that won't necessarily, and  
24 remember I've used the word launched and you had  
25 corrected me, launched or started or initiated a BPR

1 investigation? I've used the term full investigation, and  
2 you had corrected me. You'd come in with a concept of  
3 adjudication and that sort of thing. You know, it's  
4 educating me to this process this is one of my questions.  
5 I may not be exactly perfect. What I want to ask you  
6 about now are questions about the process. And what  
7 happens from an initial inquiry stage to where an  
8 investigation becomes fully involved? I guess that's the  
9 best way I know how to describe it. Okay. Let's say that  
10 there is a, probably on a daily basis, commanders look  
11 into and evaluate things that sometimes include what  
12 people in their command do. Is that fair to say it's a  
13 normal part of running a large organization?

14 ANSWER: Yes.

15 QUESTION: Okay. At some point in response  
16 to questions I' asked you've made reference to having a  
17 reason. You know, for want of a better description, I  
18 don't know how else to say this, to actually launching or  
19 getting involved in, or initiating a full blown inquiry or  
20 investigation; that there should be a reason for that.

21 ANSWER: Sure.

22 QUESTION: I mean that goes without saying.  
23 That's common sense. And that one of the reasons that  
24 BPR was created was to prevent abuse in situations  
25 where there wasn't a good reason, to investigate someone

1 activities. That sort of thing, but that was one of reasons  
2 that BPR got started to create a process, a predictable  
3 process.

4 ANSWER: Correct.

5 QUESTION: Okay. Now aside from the  
6 investigation do you know of any other....Strike that  
7 because I don't think in fairness to you. Did you at some  
8 time since the fall of 1998 and the spring of 1999, have  
9 you at some time learned that it was the commissioner  
10 who requested that Captain Ober be investigated?

11 ANSWER: Since then I had heard that. Let me  
12 put it that way. I don't know. You know again I'm a  
13 person of evidence. I want to see the document. I want  
14 to read what the report says. I don't want to hear it,  
15 because what you hear and what become fact are two  
16 different things.

17 QUESTION: I sure agree with you.

18 ANSWER: I don't know that to be certain  
19 because I haven't seen any documentation on it, but  
20 that's what I had heard. Yes.

21 QUESTION: The reason I asked you that  
22 question is that you had related an experience where you  
23 went into the conference room kitchen on an occasion  
24 where Mr. Williams and Mr. Werts were reviewing  
25 transcripts. Do you remember your response?

1 ANSWER: Yes

2 QUESTION: And there was an inquiry about  
3 you, a general a generic inquiry of you, about procedures  
4 of BPR tech?

5 ANSWER: Well I don't know what was asked of  
6 me. I don't know if it even had anything to do with my  
7 response, but that is what I remember saying and I  
8 believe that was one part we got cut off. The other part of  
9 my direction to them was that whichever avenue is  
10 expressed, if it's done as an Internal Affairs investigation  
11 then that you are to utilize the documentation that  
12 Internal Affairs has incorporated in to 4-.25, in other  
13 words administrative rights, notification inquiry, as well  
14 as the format of investigation. If you do not do it as an  
15 Internal Affairs investigation then you do not use the  
16 documents that are in 4-25. Don't mix apples with  
17 oranges was my direction to them.

18 QUESTION: Now you had mentioned an issue  
19 there about where we had got cut off. What you are  
20 referring to is that I had interrupted you at that point  
21 right?

22 ANSWER: I never finished that statement, for  
23 whatever. I can't remember why.

24 QUESTION: With my bad manners I'm now  
25 returning to it, my apologies. At the time, when I was

1 thinking, when you raised that issue was that you had  
2 also made reference at one point to use the word request,  
3 the role of the word request from the commissioner.  
4 Remember? And you used that actually a little later on  
5 after I had interrupted you right? And is what you meant  
6 by request is that the commissioner cannot direct? The  
7 commissioner can only request BPR to investigate  
8 something.

9 ANSWER: I view request as being less of a  
10 concrete term. Direct means this is the ways it's going to  
11 be. You're going to do this. A request is something, is  
12 something that you ask and then I think it usually is  
13 accompanied by reasons for the request. Direction  
14 means I just tell you; you don't need a reason. Request  
15 means that I would like you to do this because.

16 QUESTION: Agreed. Now can the  
17 commissioner direct BPR to investigate something?  
18 Order them? You will investigate this.

19 ANSWER: If it's misconduct, yes. If there's a  
20 situation of misconduct or perceived misconduct, yes.  
21 But that's invested in the regulation 4-25. You going do  
22 it either way.

23 QUESTION: But 4-25 does not permit you to  
24 go on a fishing expedition. If I remember 4-25,  
25 engendered in the regulation is an assumption that there

1 is stated ground for the investigation.

2           ANSWER: Well no those are my words. In other  
3 words, those are my words behind what, when 425 was  
4 written, what was expected, but that's not what's in the  
5 regulation. The regulation says at the request of. And I  
6 would fall back on my expectations, or our expectations  
7 at the time we wrote that is that the commissioner would  
8 have to in some way, have to believe whatever's being  
9 investigated is really related to the department, will  
10 impact it you know, even from the standpoint he used  
11 the word witch hunt. Let's say a gun comes up missing  
12 out of the station. We don't know why it's missing. We  
13 don't know if the cleaning lady took it. We certainly can't  
14 say that one of the members stole it. We don't know  
15 that. So there may be an investigation conducted and  
16 when you're done with the interviewing of every member  
17 on that station trying to find out what his or her  
18 involvement may have been, people at the station would  
19 probably say he's conducting a witch hunt. They're trying  
20 to pin this on somebody here. Well as commissioner, I'd  
21 be saying I've got to find out what's going on at that  
22 station. Why is this gun missing? So it's an  
23 investigation that's being conducted, but some people  
24 may view it as a witch hunt. And I view it as managerial  
25 response to an activity that in some way shape or form I

1 may have to account for later. IE that that gun is used in  
2 a homicide, and traced back to the State Police. In one  
3 respect there is a very fine line there between categorizing  
4 an investigation as a witch hunt verses a total review of  
5 the circumstances. So I fall back on what is the  
6 relationship of this investigation to the department? If  
7 there's a relationship there and the commissioner wants  
8 it done, if he can show that relationship, I'd be hard  
9 pressed as a captain or a major in BPR to say we're not  
10 doing it.

11 QUESTION: Can you envision a circumstance  
12 where you'd say we're not doing it?

13 ANSWER: The example I gave was if someone  
14 said I believe my wife's having an affair. I'd like you to  
15 follow so and so around. I'm not going do it sir.

16 QUESTION: Do you know of any actual  
17 circumstance where a commissioner come down and  
18 asked BPR or made a request to BPR to do something  
19 that was superfluous not any interest of the bureau or  
20 was politically motivated let's say?

21 ANSWER: So far I think we've been blessed  
22 with commissioners that have been above board and that  
23 go by the book.

24 QUESTION: And if a commissioner comes in  
25 here and doesn't have a good reason for doing something

1 then that might change your mind

2 ANSWER: Yes, if he doesn't have the reason.

3 QUESTION: If he doesn't have the reason you  
4 might change your mind. Now, I had also asked you  
5 some questions and you had indicated that there were  
6 circumstances where a commissioner would make a  
7 request, and I'm not really clear on it, that there would  
8 need for BPR to concur in that decision before the  
9 accrual process of investigation began. Let me tell you  
10 where I'm coming from to explain what I mean by that  
11 end part. It is my understand, in this situation, that  
12 indeed some investigators were assigned by the  
13 Pennsylvania State Police without any kind of; this is my  
14 understanding it doesn't make me right. I don't want you  
15 to; I want you to understand that in my making this offer  
16 to you I'm reflecting what I can best remember. And I'll  
17 ask you a question based on that, but don't assume that  
18 I'm correct in my assumptions. I'll just tell you what I  
19 have come to believe and understand. It is my, Don  
20 Bailey's understanding I'm not testifying here. These are  
21 not documents in front of you as blurted out, not very  
22 appropriately referred to earlier, you know with being the  
23 best situation. I can just give you what I remember. My  
24 understanding is that investigators at the request of the  
25 commissioner, deputies, or close assistants of his had

1 went and appointed investigators. That's my  
2 understanding. You used the word assigned. I don't  
3 know if I agree with that term. My understanding is that  
4 they were just told to do this. I may be wrong. It is my  
5 understanding, based on the facts that I know, there was  
6 no consulting with rules, regulations of BPR, no asking of  
7 BPR of anything, no request or permission from BPR to  
8 do anything. Okay, and I'm not saying that BPR or the  
9 Director of BPR would be in a position to tell the  
10 commissioner no. I don't know the answer to that. From  
11 a political point of view I have a tendency to think that  
12 that would take an awful lot of courage in a real  
13 repugnant situation. I can't even imagine it arising. I  
14 can't, but I don't know of any; I know of no facts we  
15 haven't interviewed Major Conley yet and we're going to  
16 see what he has to say. Although I think I know the  
17 answers. We'll see, but I don't know of any going  
18 through what I would refer to normally as the proper  
19 correct channels. Okay, that I know of, I'm not saying  
20 what the commissioner did was wrong. I just don't know  
21 of any. My understanding is these guys started  
22 investigating at the direction of his deputies. At some  
23 point, to my understanding, yes it comes to the attention  
24 of BPR. I'm talking about as a bureaucracy. It comes to  
25 it's attention. My question would be as follows. If I am

1 correct about that, this thing took a direction, that it  
2 started, that it's under way, this investigation, and then  
3 organizationally; Sir I was using BPR, I should be saying  
4 IAD okay. So I'm at fault there. I didn't mean BPR. I  
5 meant the attention of IAD. I don't know whether  
6 something can initiate at, you know here's BPR. I view  
7 them as the top and then view organizationally on an  
8 organizational sheet. I view IAD and I view your division.  
9 Now at some point it comes to the attention of IAD after  
10 it's started. My understanding from your testimony and  
11 the others testimony is that might not mean much of  
12 anything, because there may be an initial inquiry stage  
13 or evaluation stage where something is looked at. When  
14 it's final, maybe it takes on a form that there is a  
15 suspicion you know a mere suspicion or that kind of  
16 thing then it becomes more formal. Okay at some point  
17 it takes on a bureaucratic form and it gets and it starts to  
18 tracks and all that sort of stuff. Is that correct? Is that  
19 the way things could get started? Is it possible that these  
20 deputies can go and assign a couple of majors to  
21 investigate Captain Ober and they learn something and  
22 say -. He maybe did this and then it gets a  
23 bureaucratically assigned number, but something like  
24 that happen? Can you envision that?

25 ANSWER: Yes. It happens quite often on the

1 lower levels. That there is a cursory inquiry conducted to  
2 some allegation. At some point it's determined..... Let me  
3 give an example. Someone calls into the troop  
4 commander and says one of your cars ran me off the  
5 road responding to an incident. The commander  
6 contacts a corporal. This Corporal is looking at us. The  
7 Corporal looks into it and finds out it was not a state  
8 police car, but it was an East Pennsboro Police car.  
9 That's the end of it. We're not going any further now.  
10 This is not a State Police issue. Maybe we'll forward the  
11 information to East Pennsboro. Refer it I don't know, but  
12 as far as IAD goes that's over. At the same time the  
13 Corporal may find out there was a robbery taking place  
14 and the State Police send in nine cars. Yes, it's likely  
15 that one of our cars ran this poor elderly lady off the  
16 road. We're going to do an Internal Affairs investigation  
17 to determine who did, who was driving the car, which car  
18 was it? So circumstances could be looked at in a  
19 preliminary determination as to whether the Internal  
20 Affairs process should become involved.

21 QUESTION: So you expect that some point  
22 before this became a formal investigation, a more formal  
23 investigation, that there's some hiatus event or cursory  
24 review, yielded information which would indicate that a  
25 further or full investigation was justified. Before you

1 assign the number and go through with it.

2 ANSWER: Well there could similarly be  
3 circumstances where this Corporal doesn't know which  
4 way to go.

5 QUESTION: Doesn't know which way to go?

6 ANSWER: Doesn't have the resources. Doesn't  
7 have the time and it's decided hey we got to be on the  
8 safe side and it's investigated. Contact Internal Affairs  
9 get a number, do a worksheet, and have an investigation  
10 conducted.

11 QUESTIONS: Could you hold at that one  
12 point? I think we need; All right let me see if I can finish  
13 this one. Okay let's say there's a number's assigned that.  
14 There's some kind of intervening information or  
15 additional information or information has developed  
16 sufficient to make this a situation where okay we need to  
17 investigate and go forward. And it's a formal IAD or BPR  
18 investigation. I know so let's say it's a BPR. Once that  
19 process is completed, as I understand it, there's a report  
20 written that is essentially is a factual summary. Am I  
21 correct? It doesn't make recommendations on what to do  
22 or anything like that. It's a factual summary.

23 ANSWER: That's correct.

24 QUESTION: Okay. Then it goes to  
25 adjudication, what you referred to as adjudication.

1 ANSWER: Correct.

2 QUESTION: Do you know if that happened in  
3 Captain Ober's case?

4 ANSWER: No I do not.

5 QUESTION: You don't know if it's ever been  
6 adjudicated?

7 ANSWER: No. I'm not certain of that. I don't  
8 know that. I know something was done because I know  
9 interviews were conducted, but I don't know in what  
10 shape or form that ultimately was documented.

11 QUESTION: Or if it was.

12 ANSWER: Well I'm assuming because there  
13 were interviews. At least there were transcript or tapes.  
14 That record I'm sure exists, but I don't know what  
15 beyond that.

16 QUESTION: Who would have this?

17 ANSWER: The investigators.

18 QUESTION: Who is the adjudicator? If there  
19 was any adjudicator on Captain Ober. Do you know?

20 ANSWER: It depends on where he was  
21 assigned at the time that the investigation was  
22 completed. It would be his commanding officer. So  
23 whoever his commanding officer was.

24 QUESTION: Koselnak? He's in LCE I guess  
25 he...

1                   ANSWER: Okay LCE. Then would he have  
2                   been in the bureau?

3                   QUESTION: I guess.

4                   ANSWER: Well if he was there.

5                   QUESTION: Major Wall, IMMS

6                   ANSWER: Okay if he was assigned there then  
7                   he was assigned to Technology Services. The Bureau of  
8                   Technology Services. The Bureau Director is Major Wall.  
9                   He would responsible for Technology

10                  QUESTION: And if it wasn't him, and he's  
11                  assigned to LCE then it's going to be Mr. Koselnak.

12                  ANSWER: If Major Koselnak was the Bureau  
13                  Director at the time. There's a different Bureau Director  
14                  at the time.

15                  QUESTION: Would it be anybody above that?

16                  ANSWER: As a Captain assigned to a Bureau it  
17                  should be the Bureau Director that makes the  
18                  adjudication. I don't know of any circumstances where  
19                  that's been other than that.

20                  QUESTION: Once they do the adjudication  
21                  what do they do then? Let me take that back. What if  
22                  the facts don't suggest the person did anything wrong?

23                  ANSWER: Well if the person had been  
24                  provided with a notification of inquiry in writing. That  
25                  spells out an issue. That issue should be communicated

1 to them where it's adjudicated as to... I don't know what  
2 it said, but addressing whatever the notification of  
3 inquiry said.

4 MR BAILEY: You know what. I'm going to try  
5 and pack this in to this two hour tape if I can. Can we  
6 suspend?

7 MR. MARCECA: Yes we can. It's 3:04. We're  
8 now going to suspend the deposition.

9 MR. MARCECA: It's 3:08. We're back on  
10 camera and deposition.

11 MR BAILEY: Is that one on down below?

12 MR. MARCECA: Yes sir.

13 MR BAILEY: All right. Captain Skurkis I'd like  
14 to thank you very much for you coming here today. I  
15 very much appreciate you cooperation. I have no further  
16 questions for you. I again apologize sometimes it's hard.  
17 Your answers are very involved and technical. I think I  
18 interrupted you a couple times. I apologize for that. I  
19 think we were able to get back to them though. Is there  
20 anything you'd like to add or any questions I asked that  
21 you'd like explained. If not we're done.

22 A: In response to one of your comments. You  
23 drew this scenario about you thought is was, what was  
24 the term you used. You believed it's next to impossible  
25 that if the commissioner came to someone and asked

1   them to do an investigation that they wouldn't go ahead  
2   and do it. I know how you used the term there. Anyway,  
3   what I would like to say is you're looking at it from that  
4   kind of standpoint. From my standpoint I can... I think  
5   what you said was unfathomable. That they would not  
6   go ahead with the investigation.

7               MR BAILEY: If there was a reason for it. I  
8   mean a good reason for it.

9               A: Oh okay

10              MR. BAILEY: I did not mean to imply if I  
11   implied that someone would say to the commissioner,  
12   you know, like go into some detailed question or question  
13   the commissioner in a case where let's say that the  
14   commissioner came with a totally frivolous request. Now  
15   I have difficulty envisioning a situation where most of the  
16   State Police members I've talked to if a commissioner  
17   came with a outlandishly frivolous or an irrelevant kind  
18   of a personal request let's say that was obvious. One of  
19   the examples you raised I think was an improper  
20   wiretapping situation. Now I assume that most of you  
21   would say oh no I'm not going to do that. Although we  
22   have had testimony here where some of the staff  
23   members have indicated that if they knew that the  
24   commissioner himself was target of an investigation I  
25   believed that they indicated that they said yes out of

1 loyalty they would tell him. I disagree with that. Most of  
2 the members that have testified here I think would have  
3 disagreed with that. I have not asked you that question.  
4 I don't intend to. I don't see any reason to. I don't think  
5 it's relevant, but you're not a defendant here. For what  
6 it's worth I have had a response like that which sort of  
7 shocked me. I maybe didn't hear it right, and maybe the  
8 question wasn't understood properly either.

9 A: We're clear now.

10 MR BAILEY: I, we're on the straight and  
11 narrow. We're reading from the same page. Again I'd like  
12 to thank you for being here. And I'd like to thank you  
13 very much for your courteous responses. Any questions  
14 before we go?

15 TONY MARCECA: It's 3:12 on 5 march 2002.  
16 The video deposition is now completed.

17  
18  
19  
20  
21

30

1

1 UNITED STATES DISTRICT COURT  
2 FOR THE MIDDLE DISTRICT  
3 OF PENNSYLVANIA

4 \* \* \* \* \*

5 DARRELL G. OBER, \*

6 Plaintiff \* No.

7 vs. \* 1: CV-01-0084

8 PAUL EVANKO, MARK \* Civil Action-Law

9 CAMPBELL, THOMAS \*

10 COURY, JOSEPH \*

11 WESTCOTT, \*

12 HAWTHORNE CONLEY, \*

13 Defendants \*

14 \* \* \* \* \*

15

16 VIDEOTAPED DEPOSITION OF

17 MICHAEL J. SOOHY

18 MARCH 14, 2002

19

20

21

22

23 Any reproduction of this transcript

24 is prohibited without authorization

25 by the certifying agency

*ORIGINAL*

I have read the transcript of my testimony and certify that it is accurate with the above corrections.

*Vivian L. Mosley*  
Notary Public Signature Seal  
Vivian L. Mosley, Notary Public  
Pittsburgh, Allegheny County  
My Commission Expires Aug. 8, 2002  
Member, Pennsylvania Association of Notaries

1 VIDEOTAPED DEPOSITION

2 OF

3 MICHAEL J. SOOHY was taken on behalf  
4 of the Defendants herein, pursuant  
5 to the Rules of Civil Procedure,  
6 taken before me, the undersigned,  
7 Denise Jeanne Khorey-Harriman, a  
8 Registered Merit Reporter and Notary  
9 Public in and for the Commonwealth  
10 of Pennsylvania, at the offices of  
11 the Federal Bureau of Investigation,  
12 3311 East Carson Street, Pittsburgh,  
13 Pennsylvania, on Thursday, March 14,  
14 2002, at 10:12 a.m.

A P P E A R A N C E S

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JOHN R. BROWN

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I N D E X

WITNESS: MICHAEL J. SOOHY

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IDENTIFIED

NONE OFFERED

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OBJECTION PAGE

ATTORNEY

PAGE

BAILEY

15, 16, 22

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## P R O C E E D I N G S

- - - - -

VIDEOGRAPHER:

Good morning. Be advised that the video is in operation. My name is Anthony Marceca. I live at 2219 Dixie Drive, York, Pennsylvania. I've been contacted by PR Video to be the video operator for this deposition. The case is in The United States District Court for the Middle District of Pennsylvania. It's captioned Darrell G. Ober, Plaintiff, versus Paul Evanko, et al. And it's a civil action law. And it's tiled 1: CV-01-0084. The deposition today is being held at 3311 East Carson Street, Pittsburgh, Pennsylvania. It is now

8

1 10:12 a.m. on March the  
2 --- what's today, the  
3 15th?

4 ATTORNEY BAILEY:

5 14th, I guess. Yes.

6 VIDEOGRAPHER:

7 March 14th, 2002.

8 The video deposition is  
9 being taken on behalf of  
10 the Plaintiff, Mr. Darrell  
11 Ober. And the witness is  
12 Michael Soohy.

13 ATTORNEY GUIDO:

14 Actually, this is ---  
15 we're the ones that  
16 noticed the deposition.

17 VIDEOGRAPHER:

18 Oh, I'm sorry.

19 ATTORNEY GUIDO:

20 That's all right.

21 The Defendants are taking  
22 this deposition.

23 VIDEOGRAPHER:

24 Okay. Let the record  
25 show the Defendants are

9

1 taking the deposition of  
2 Mr. Michael Soohy, an FBI  
3 agent. And Mr. Soohy,  
4 would you please raise  
5 your right hand and state  
6 after me for the record?

7 MICHAEL J. SOOHY, CALLED AND SWORN  
8 TO TESTIFY

9 VIDEOGRAPHER:

10 Thank you. Do you  
11 mind a sound check around  
12 the room?

13 ATTORNEY GUIDO:

14 No, not at all.

15 ATTORNEY BAILEY:

16 Sure. My name is Don  
17 Bailey. I represent the  
18 Plaintiff, Darrell G.  
19 Ober, 4311 North 6th  
20 Street, Harrisburg, PA,  
21 717-221-9500.

22 ATTORNEY GUIDO:

23 Syndi Guido. I  
24 represent the Defendants.  
25 I'm from the Governor's

10

1 Office of General Counsel,  
2 333 Market Street, 17th  
3 Floor, Harrisburg, PA  
4 17101.

5 ATTORNEY BAILEY:

6 Sir, could we get you  
7 on there?

8 ATTORNEY KILLEEN:

9 Sure. My name's Jeff  
10 Killeen. I'm the Chief  
11 Division Counsel for the  
12 FBI, Pittsburgh Division.  
13 The address is 3311 East  
14 Carson Street, Pittsburgh,  
15 15203. Telephone  
16 412-432-4000.

17 ATTORNEY BAILEY:

18 It's Syndi's ---.

19 ATTORNEY GUIDO:

20 Yes.

21 ATTORNEY BAILEY:

22 I believe she wants  
23 to ---.

24 ATTORNEY GUIDO:

25 I just get a little

11

1 confused when we have so  
2 many different cameras as  
3 to who's doing what. Are  
4 you guys all ready to go?  
5 Okay. And are we waiving  
6 objections, except as to  
7 the form of the question?

8 ATTORNEY BAILEY:

9 No, not waiving.  
10 Objections, except as to  
11 the form of the question,  
12 will be reserved until the  
13 time of trial.

14 ATTORNEY GUIDO:

15 That's fine.

16 ATTORNEY BAILEY:

17 We so stipulate.

18 Sure.

19 ATTORNEY GUIDO:

20 That's fine.

21 EXAMINATION

22 BY ATTORNEY GUIDO:

23 Q. All right. Sir, can you  
24 tell us what your current position  
25 with the FBI is?

12

1 A. I'm a special agent with  
2 the FBI right now.

3 Q. Are you situated here in  
4 the Pittsburgh area?

5 A. Actually, my office is in  
6 Cranberry Township, Pennsylvania,  
7 resident agency.

8 Q. And we're here to ask you  
9 questions today about an interview  
10 --- excuse me, an investigation that  
11 the FBI conducted with respect to  
12 Trooper ---?

13 A. Kipp.

14 Q. Kipp. I knew that wasn't  
15 the right name. Kipp Stanton. Do  
16 you recall that? Are you familiar  
17 with the investigation?

18 A. Yes, I am.

19 Q. When did that  
20 investigation first begin?

21 A. I believe the  
22 investigation with Trooper Stanton  
23 started prior to the time I got to  
24 Pittsburgh, maybe 1998 sometime.

25 Q. When did you get to

13

1 Pittsburgh?

2 A. I got here in August of  
3 '98. The case was ongoing at that  
4 time.

5 ATTORNEY BAILEY:

6 Yes, if we could  
7 clarify. You meant it  
8 began before you got here?

9 A. I believe the  
10 investigation began before I got to  
11 Pittsburgh, yes.

12 BY ATTORNEY GUIDO:

13 Q. And you got to Pittsburgh  
14 ---?

15 A. I ---.

16 Q. Excuse me. You arrived in  
17 Pittsburgh when?

18 A. I think it was August of  
19 1998.

20 Q. And in the course of that  
21 investigation, did you have contact  
22 with various members --- any contact  
23 with members of the state police?

24 A. Yes.

25 Q. Who did you have contact

1 with?

2 A. Captain Darrell Ober.

3 Q. Did you have contact with  
4 anyone else?

5 A. No. Personally, I didn't,  
6 no.

7 Q. When did you first meet  
8 Captain Ober, to the best of your  
9 memory?

10 A. You know, I --- it must  
11 have been --- it could have been in  
12 '99. It could have been early  
13 2000. I don't recall. We met at  
14 the state police barracks in  
15 Everett, PA, myself and Ralph Kush.

16 Q. What was that meeting  
17 about?

18 A. We wanted to inform  
19 Captain Ober about an investigation  
20 we had ongoing, and that we believed  
21 that a trooper, Kipp Stanton, was  
22 involved in some illegal activity.  
23 And we wanted to inform Captain Ober  
24 as head of the --- as a  
25 representative of the state police

15

1 OPR about what we had found, where  
2 we were going with it.

3 Q. Did you have any  
4 discussion with Captain Ober about  
5 the confidentiality of the  
6 information that you were providing  
7 him?

8 A. Per se, no. We didn't  
9 discuss confidentiality. We  
10 discussed the facts of the case as  
11 best we knew them.

12 Q. From your perspective, was  
13 there any reason that he should not  
14 tell his Major about the  
15 investigation?

16 ATTORNEY BAILEY:

17 Objection. You may  
18 respond, sir.

19 A. From my perspective, I  
20 believe that I was informing State  
21 Police OPR about a situation  
22 involving one of their employees,  
23 and possibly more. And my position  
24 personally was that I'm not going to  
25 --- I'm not going to get involved

16

1 in telling anybody what to do with  
2 that information.

3 BY ATTORNEY GUIDO:

4 Q. Did you say anything to  
5 Captain Ober along the lines of do  
6 not report this to your superiors or  
7 keep this to yourself, anything like  
8 that?

9 A. I don't recall saying  
10 anything like that.

11 Q. Did you --- from the  
12 perspective of the investigation,  
13 did you have any reason that his  
14 superiors could not know about the  
15 investigation?

16 ATTORNEY BAILEY:

17 Objection. You may  
18 respond, sir.

19 A. We didn't --- we didn't  
20 discuss per se who he should or who  
21 he shouldn't tell. I recall Captain  
22 Ober having some concerns,  
23 expressing some concerns about who  
24 he should tell.

25 BY ATTORNEY GUIDO:

17

1 Q. Do you remember what he  
2 said?

3 A. This investigation  
4 involved the possibility that people  
5 higher up in the State Police might  
6 be somehow involved in change of  
7 test scores or moving somebody from  
8 one bracket to the other. We  
9 informed Captain Ober about what the  
10 trooper in question had said on  
11 tape. We let him read the  
12 transcripts. We let him see a  
13 videotape. He had mentioned a few  
14 names.

15 Captain Ober at that point  
16 expressed some concerns about only  
17 two or three people in the State  
18 Police hierarchy that would be in a  
19 position to do that, and that he  
20 would have to be careful about who  
21 he would notify about this.

22 Q. So it was Captain Ober,  
23 rather than yourself, that was  
24 expressing the concerns?

25 A. Captain Ober was

18

1 expressing some concerns about who  
2 in the State Police needed to be  
3 notified about this because he  
4 didn't really want --- he was doing  
5 the right thing on our side. He  
6 doesn't want to compromise anything  
7 that we had going on.

8 Q. Did he have any --- when  
9 you say he said two or three people,  
10 did he mention anybody that possibly  
11 could be involved in that?

12 A. He may have mentioned  
13 positions. The names wouldn't have  
14 meant anything to me. He may have  
15 mentioned names. I'm not sure.

16 Q. Did you tell him anyone  
17 that you thought from the course of  
18 your investigation higher ups in the  
19 State Police that could be involved?

20 A. No. The only name that we  
21 had --- we had was trooper. And we  
22 had provided him with a couple other  
23 names of people that the trooper had  
24 told our source about. And we asked  
25 him to determine if these guys were,

1 in fact, employed by the State  
2 Police. I think one name in  
3 particular, but I can't recall what  
4 it was.

5 Q. Did it turn out that those  
6 people were employed by the State  
7 Police?

8 A. It turned out that this  
9 person, this one person, was not.

10 Q. Were any of them employed,  
11 other than --- other than Trooper  
12 Stanton, was there any other member  
13 of the State Police that it turned  
14 out that they were potentially a  
15 target?

16 A. No.

17 Q. And that meeting that  
18 you're discussing, do you remember  
19 when that was?

20 A. Well, there were two  
21 meetings. One was ---.

22 Q. When was the first  
23 meeting?

24 A. One was in Everett at ---  
25 again, I don't recall when it was.

20

1 I know it was cold outside. Could  
2 have been January, February, March  
3 2000, 1999. I don't know. The  
4 second meeting was ---.

5 Q. By the time that you had  
6 that meeting, though ---?

7 ATTORNEY BAILEY:

8 Please. He started  
9 the second meeting. He  
10 hadn't finished.

11 BY ATTORNEY GUIDO:

12 Q. Well, let's stick with the  
13 first meeting.

14 A. Okay.

15 ATTORNEY BAILEY:

16 He hadn't finished.

17 ATTORNEY GUIDO:

18 We're going to stick  
19 with the first meeting.

20 ATTORNEY BAILEY:

21 He hadn't ---.

22 ATTORNEY GUIDO:

23 We're sticking with  
24 the first meeting, and  
25 then we'll go on.

21

1 ATTORNEY BAILEY:

2 Syndi ---?

3 ATTORNEY GUIDO:

4 Please. These are my  
5 questions. When you have  
6 questions, you can ask  
7 them.

8 ATTORNEY BAILEY:

9 Please.

10 ATTORNEY GUIDO:

11 No.

12 ATTORNEY BAILEY:

13 I'll tell you what.  
14 We'll take equipment  
15 down. Now, let's stop  
16 acting this way.

17 ATTORNEY GUIDO:

18 That's fine.

19 ATTORNEY BAILEY:

20 Ma'am, please, please  
21 he was --- in all due  
22 respect, I'm not trying to  
23 obfuscate your  
24 deposition. He had --- he  
25 was responding to the

22

1 question. He had started  
2 to say the second meeting  
3 after describing the  
4 first. I --- he has a  
5 right to respond. I'd  
6 like to hear his  
7 response.

8 ATTORNEY GUIDO:

9 Sir, my question was  
10 about the first meeting.  
11 I didn't ask you a  
12 question about the second  
13 meeting yet. Let's stick  
14 with the first meeting.  
15 Okay.

16 ATTORNEY BAILEY:

17 You don't have a  
18 right to cut him off when  
19 he hadn't finished.

20 BY ATTORNEY GUIDO:

21 Q. Do you have anything else  
22 to say about the first meeting?

23 ATTORNEY BAILEY:

24 Let me place an  
25 objection, and then I'll

23

1 back off. I want to  
2 object on the record that  
3 Counsel has intentionally  
4 interrupted this witness  
5 who, I think, was in a  
6 very relaxed and  
7 cooperative way responding  
8 to a question that was on  
9 a table --- on the table.  
10 He had answered the  
11 question and made  
12 reference to a second ---  
13 a meeting. And he was  
14 interrupted. And Counsel  
15 insists, I believe,  
16 against every rule of  
17 Court with which I am  
18 familiar, on letting him  
19 finish his answer, which  
20 he has every right to do.  
21 I object. Thank you.

22 BY ATTORNEY GUIDO:

23 Q. Now, as far as the first  
24 meeting is concerned because that's  
25 the one I mean, this is the one in

1     Everett; correct?

2     A.             Right.

3     Q.             Do you know --- do you  
4     have any idea whether that --- at  
5     the time you had that meeting, did  
6     you have all the tapes from the  
7     informant?

8     A.             We had some.     The  
9     investigation was still ongoing.

10    Q.             Were there more tapes that  
11    came later?

12    A.             Yeah, I believe there was  
13    at least a videotape afterwards.

14    Q.             Now, you were going to  
15    mention a second meeting.    Can you  
16    tell me about the second meeting?

17    A.             The second meeting was  
18    after we had obtained a videotape in  
19    which Trooper Stanton and another  
20    individual by the name of Jay Bridge  
21    or Bridges had met with our source,  
22    and we had videotaped a \$1,000  
23    payment from Bridge to Stanton to  
24    our source.

25    Q.             Okay.

1 A. At that point, we then  
2 arranged a second meeting with  
3 Captain Ober.

4 Q. When you say we arranged,  
5 who made the arrangements for the  
6 meeting?

7 A. Agent Ralph Kush.

8 Q. Where was that meeting  
9 held?

10 A. That was in Indiana, PA,  
11 at a Holiday Inn or something.

12 Q. At a Holiday Inn, did you  
13 say?

14 A. It might have been --- I  
15 believe it was a Holiday Inn.

16 Q. Was it agent --- Special  
17 Agent Kush that made the  
18 arrangements to have the meeting at  
19 the Holiday Inn?

20 A. I instructed Agent Kush to  
21 contact Captain Ober. And I believe  
22 it's my understanding that Captain  
23 Ober arranged for the meeting at the  
24 Holiday Inn.

25 Q. Do you know why the

26

1 meeting was held at a Holiday Inn  
2 rather than --- was there any reason  
3 you couldn't have it at headquarters  
4 is what I'm asking?

5 A. It was my understanding  
6 that Captain Ober was concerned  
7 about who would know that we were  
8 meeting with him. And he wanted to  
9 meet at a location where nobody  
10 would --- nobody would know what was  
11 going on. He wanted to meet at a  
12 hotel.

13 Q. Was that your concern as  
14 well or just his concern?

15 A. No, that was his concern.

16 Q. And do you remember when  
17 that meeting was held? I know it's  
18 a long time ago.

19 A. It was several months  
20 after the first meeting is all I can  
21 remember. I don't know the exact  
22 date.

23 Q. That meeting --- what was  
24 that meeting about?

25 A. Again, we --- Captain Ober

1     rented a room. We showed him the  
2     videotape that I just described.  
3     And we talked a little bit more  
4     about the fact that Trooper Stanton  
5     was still talking about other people  
6     in the State Police, having  
7     basically bought their jobs.

8     Q.           How long was the meeting?

9     A.           An hour, hour and a half.

10    Q.           During that second  
11    meeting, was there any discussion  
12    about confidentiality?

13    A.           From our end, no. We  
14    didn't --- we didn't discuss  
15    confidentiality. Again, every time  
16    that we met with Captain Ober on the  
17    two occasions, he always expressed  
18    concern about who should know about  
19    this and who shouldn't know about  
20    this. And again, I believe that  
21    Captain Ober's intent was to make  
22    sure that he didn't go somewhere and  
23    cause something to compromise what  
24    we were doing.

25    Q.           When you say he expressed

28

1 concern about that, did he ask for  
2 your advice on who he should tell?

3 A. No.

4 Q. Did you give him any  
5 advice on whom he should tell?

6 A. No. I don't believe it  
7 would be my position to tell State  
8 Police OPR what they should do with  
9 information.

10 Q. Did you ever speak with  
11 Captain Ober again about this?

12 A. You know, I don't believe  
13 I did. I may have had a phone  
14 conversation with him just to fill  
15 him in on the details of what was  
16 happening since that meeting. But  
17 we didn't meet personally. And I  
18 don't know if we had a phone call or  
19 not. We may have.

20 Q. So you --- just to  
21 clarify, you don't have any  
22 recollection of any other  
23 conversations?

24 A. No, I don't.

25 ATTORNEY GUIDO:

29

1 One moment, please.

2 It's your witness.

3 ATTORNEY BAILEY:

4 Thank you very much,  
5 Syndi.

6 EXAMINATION

7 BY ATTORNEY BAILEY:

8 Q. Good morning, sir.

9 A. Good morning.

10 Q. Mike, I understand you ---  
11 I'll try to keep this very brief. I  
12 understand you've been up working  
13 very hard. And I compliment you for  
14 that. And I want to thank you for  
15 coming here today to answer  
16 questions. I have just a few  
17 questions for you, sir. I follow a  
18 practice, particularly when I'm  
19 dealing with someone who's a skilled  
20 professional, that if you want to  
21 know where I'm going with a  
22 question, whether it's curiosity or  
23 concern of any type, I want you to  
24 feel free to ask me. I don't mind.  
25 I have absolutely no interest in any

30

1 factual distortions, trick questions  
2 or anything like that. I don't want  
3 that to occur. And I know there's  
4 no reason to expect that in this  
5 case, incidentally, in terms of your  
6 interview here. But I want you to  
7 feel free and relaxed to if you have  
8 any curiosity at all to ask me, and  
9 I'll be very happy to comply. Okay?

10 A. Okay.

11 Q. And that goes for your  
12 attorney, too, or for that matter,  
13 opposing Counsel, I have no  
14 objection. Okay. Sort of three  
15 areas, Mike, I'd like to ask about.  
16 The first one would be --- if you  
17 --- I understand you came into this  
18 particular area of FBI jurisdiction  
19 to work sometime on or about August  
20 of '98?

21 A. Uh-huh (yes).

22 Q. Okay. Now, when you ---  
23 when did you first become aware that  
24 there was this --- could we call it  
25 the Stanton thing? I don't know

31

1 really what quite to call it. For  
2 want of a better description, the  
3 Stanton thing, the Stanton matter.  
4 Do you remember when you first  
5 became aware of it?

6 A. When I first got here,  
7 part of what my job responsibilities  
8 were was to find out what were going  
9 on in any of the pending criminal  
10 investigations.

11 Q. Right.

12 A. And I took a look at this  
13 case that had been --- had been  
14 going on for a couple of years. And  
15 I realized that there had been a  
16 couple of occasions when our source  
17 had discussed a trooper.

18 Q. All right.

19 A. Who was interested in  
20 possibly doing some kind of  
21 business. I wasn't sure at that  
22 point --- I don't recall at that  
23 point if there were any  
24 conversations between the trooper  
25 and our source, but I talked to

32

1 Agent Kush. And I said look, Ralph,  
2 this looks like potentially we can  
3 move this along a little further.  
4 Let's --- you know, let's bring a  
5 source in, which we did. And we  
6 talked to him about his relationship  
7 with the trooper. And we basically  
8 at that point decided, well, let's  
9 see what transpires. Let's have  
10 some conversations with this guy and  
11 see what he's interested in and see  
12 what he wants to do.

13 And at that point, which  
14 would have probably been early 1999,  
15 mid 1999, whatever, we directed the  
16 source to reach out to this guy and  
17 have some additional conversations  
18 with him and see what he wanted.

19 Q. Okay. Now, I --- you  
20 know, it's not my purpose to testify  
21 here. And I certainly would yield  
22 to any corrections by opposing  
23 Counsel. But my perusal of what  
24 documents have been made available  
25 to me indicates the investigation

33

1 may have begun sometime around or  
2 may have --- you know, or the fact  
3 that there might have been a problem  
4 with Stanton may have come to the  
5 FBI's attention sometime on or about  
6 1996. Does that refresh your  
7 recollection at all?

8 A. It's possible.

9 Q. Possible. Okay.

10 A. All I remember is that  
11 when I came here, the case had kind  
12 of floundered for a while.

13 Q. Okay.

14 A. Right.

15 Q. All right, sir. And it's  
16 my understanding that at sometime,  
17 there had been a mention of Mr. ---  
18 of a state representative named Joe  
19 Preston. Is that possible?

20 A. That's correct.

21 Q. All right, sir. And that  
22 there was a Len Bodack, Senator Len  
23 Bodack was also --- not to imply  
24 that they did anything wrong, by the  
25 way, but that somehow they had been

1 mentioned?

2 A. That's correct.

3 Q. All right, sir. Now, do  
4 you have a recollection based on  
5 your involvement in the  
6 investigation of when the State  
7 Police were first notified, excuse  
8 me, about Mr. Stanton's possible  
9 wrongdoing?

10 A. It's my understanding that  
11 Ralph Kush had talked to somebody in  
12 the State Police about Mr. Stanton's  
13 possible involvement prior to my  
14 arriving in Pittsburgh, sometime in  
15 '96, '97.

16 Q. Do you have a  
17 recollection, Mike, if that might  
18 have been some folks in the western  
19 office of IAD, if you know?

20 A. I have no idea who it was.

21 Q. Okay.

22 A. All I remember is that  
23 when I instructed Ralph --- when we  
24 discovered that Trooper Stanton was  
25 fairly involved in this and was

35

1 teetering on criminal activity, I  
2 instructed Ralph at that point to  
3 contact the State Police OPR and  
4 arrange a meeting with them because  
5 we wanted to make sure they were  
6 aware of what was going on. And at  
7 that point, I remember him telling  
8 me that he had talked to somebody  
9 previously about this.

10 Q. Okay.

11 A. And we didn't go into any  
12 other detail about that.

13 Q. Okay. And Ms. Guido, I  
14 think, pretty much covered the  
15 sequence of events and the  
16 conversations that you were involved  
17 in with Captain Ober pretty much.  
18 So I want to set that aside for just  
19 a moment. And I want you to go back  
20 in your mind to the period of time,  
21 I think you'd said that you weren't  
22 sure, '99, 2000, you just weren't  
23 sure. But at some point, this thing  
24 apparently, for purposes of what the  
25 FBI was doing, came to a conclusion?

1 A. That's correct.

2 Q. And now, here's a few  
3 questions I want to ask about that.  
4 Let me tell you where I'm going.  
5 It's our understanding that after  
6 the investigation came to a  
7 conclusion, and it forms a major  
8 material legal artifice in the  
9 current lawsuit, that Captain Ober  
10 and another PSP official informed  
11 the Commissioner. And there's no  
12 secret the Commissioner became  
13 upset, for whatever reason, you  
14 know, he did become upset. After  
15 the FBI had closed this  
16 investigation initially, in other  
17 words, I believe --- my  
18 understanding is at some point you  
19 notified Captain Ober that, hey, it  
20 looks like it's just --- something  
21 to the effect that it's just  
22 Stanton, and that's basically it.  
23 If that's correct, could you confirm  
24 that?

25 A. I don't know at what point

1 or if Captain Ober was notified  
2 about.

3 Q. Okay.

4 A. I would --- I didn't do  
5 that.

6 Q. Okay.

7 A. So I don't --- I can't  
8 answer that question.

9 Q. Fair enough. Now, sir,  
10 after at some point --- although at  
11 some point you probably became aware  
12 that the FBI, whether it was  
13 Mr. Kush, whether it was Rick or  
14 somebody had said, okay, hey, we're  
15 satisfied. After that point, did  
16 you hear anything about the  
17 investigation or how it was  
18 conducted?

19 A. Yeah. I got called in to  
20 my SAC's office.

21 Q. Oh.

22 A. And was informed that  
23 Commissioner Evanko was not real  
24 happy with the way this thing ended,  
25 transpired.

1 Q. Well, for what it's worth  
2 to you, and it's probably not much,  
3 it sure looked to me like you guys  
4 did what you were supposed to do.  
5 What was the problem? What had you  
6 done wrong or what --- I'm not  
7 saying you did. What was --- from  
8 what you heard and from what was  
9 said to you, Mike, what was the  
10 problem?

11 A. The problem, from the way  
12 it was explained to me, is that the  
13 Commissioner got blind-sided by this  
14 and wasn't happy with it.

15 Q. Mike, now you and I both  
16 know I'm an old politician, you're  
17 an experienced FBI agent. I would  
18 think that if you're investigating  
19 something, I would assume that a  
20 basic axiom of law enforcement  
21 procedure is that unless there's  
22 some good reason, you're not going  
23 to tell a target or potential target  
24 of an investigation, no matter how  
25 unlikely it may seem that it could

1 be true, but you're not going to  
2 tell them you're investigating them;  
3 do you?

4 A. No.

5 Q. Well, that makes sense to  
6 me. Now, you had used the acronym,  
7 I believe, OPR?

8 A. Uh-huh (yes).

9 Q. Is it possible that what  
10 you mean is B --- the State Police  
11 term for it is Bureau of  
12 Professional Responsibility? You're  
13 using the acronym OPR to mean Office  
14 of Professional Responsibility;  
15 right?

16 A. That's correct.

17 Q. So we are talking about  
18 the same thing?

19 A. That's correct.

20 Q. Okay. So your reason for  
21 contacting Mr. Ober, you may have  
22 --- may not have had any specific  
23 reason otherwise, but as you  
24 recollect it, your reason was at the  
25 time he --- you know, based on your

40

1 information, was in charge of BPR or  
2 OPR, as you put it; right?

3 A. Right.

4 Q. So that would have been a  
5 proper place to go?

6 A. Correct.

7 Q. Okay. Sir, do you know  
8 when Rick --- is it Mosquera?

9 A. Yes.

10 Q. Can you spell it for the  
11 record for us, if you know?

12 ATTORNEY BAILEY:

13 Can you, sir?

14 ATTORNEY KILLEEN:

15 Yes.

16 M-O-S-Q-U-E-R-A.

17 ATTORNEY BAILEY:

18 Okay. I have been  
19 misspelling it.

20 M-O-S-Q-U-E-R-A. Let me  
21 get that down because I  
22 have been misspelling it.  
23 Not that it's a big deal,  
24 but --- all right.

25 BY ATTORNEY BAILEY:

1 Q. Now, do you have a  
2 recollection, Mike, of when Rick  
3 first became aware of the  
4 investigation?

5 A. Exact date, no. I mean,  
6 we're --- I don't walk up to the SAC  
7 and inform them about every case.  
8 At some point when this case became  
9 --- when Stanton got more involved  
10 in it, I'm sure at that point I  
11 notified him about it. But as far  
12 as when, I couldn't tell you that.

13 Q. Mike, is it fair to say  
14 --- how many years have you been a  
15 professional with the FBI?

16 A. Almost 16.

17 Q. Is it fair to say that you  
18 have a high level of respect and  
19 trust for your colleagues, and that  
20 you operate on the assumption that  
21 they have a high level of respect,  
22 confidence and trust in you?

23 A. Absolutely.

24 Q. And is it fair, sir, to  
25 say that one of the reasons why you

1 don't go up to Rick with every case  
2 is that he's got a lot of work to  
3 do, you have a lot of work to do,  
4 you guys know what job you have to  
5 do, and you trust and respect each  
6 other to exercise good judgment?

7 A. That's correct.

8 Q. Is that right, sir? And  
9 would Mr. Mosquera ever want or  
10 expect you to notify or inform a  
11 potential target --- maybe a very  
12 simple sort of kindergarten kind of  
13 question, but bear with me. Do you  
14 believe that Mr. Mosquera would ever  
15 want or expect you as an obviously  
16 qualified and proficient  
17 professional to notify a potential  
18 target of an investigation that  
19 there may be some need to be  
20 concerned about them? Would he  
21 expect you to do that?

22 A. I don't believe that he  
23 would, no.

24 Q. And he wouldn't expect you  
25 to ever play politics with your job;

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1 would he, sir?

2 A. No.

3 Q. And that's not the role  
4 and function of the FBI or any law  
5 enforcement agency? It is to  
6 investigate in accordance with the  
7 law; isn't that correct, sir?

8 A. Right.

9 ATTORNEY BAILEY:

10 Thank you. I may be  
11 finished. If you give me  
12 just one minute, sir.  
13 That's all I need to do is  
14 walk off with your sneaky  
15 little microphone.

16 OFF RECORD DISCUSSION

17 ATTORNEY BAILEY:

18 I'd like everybody to  
19 be careful. Please  
20 remember that these mics  
21 are always running like  
22 attorneys, and you need to  
23 be aware of that so you  
24 don't say something.  
25 Counsel should be aware of

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1                   that. I sometimes  
2                   forget. That's why I  
3                   bring it up. Sir, I don't  
4                   have any additional  
5                   questions. I'd like to  
6                   express my gratitude and  
7                   also the appreciation of  
8                   Captain Ober for the time  
9                   you've taken today. Thank  
10                  you.

11       A.           You're welcome.

12                               ATTORNEY GUIDO:

13                   I have some  
14                   follow-up. Okay?

15                               VIDEOGRAPHER:

16                   One moment. It's now  
17                   --- it's March 14th,  
18                   2002. It's 10:40 a.m.  
19                   And this deposition is now  
20                   concluded.

21                               ATTORNEY BAILEY:

22                   No, no. She has  
23                   additional questions.

24                               VIDEOGRAPHER:

25                   Oh, I'm sorry.

45

1 ATTORNEY BAILEY:

2 It didn't come  
3 through. I could hardly  
4 hear it myself. Why don't  
5 you correct that?

6 ATTORNEY GUIDO:

7 I have some  
8 follow-up.

9 VIDEOGRAPHER:

10 Excuse me.

11 ATTORNEY GUIDO:

12 Sorry.

13 VIDEOGRAPHER:

14 We're going to  
15 continue the deposition.

16 RE-EXAMINATION

17 BY ATTORNEY GUIDO:

18 Q. You mentioned several  
19 times the acronym, your SAC?

20 A. Uh-huh (yes).

21 Q. Just so the record's  
22 clear, what's SAC stand for?

23 A. Special Agent in Charge.

24 Q. Special Agent in Charge.  
25 What is he in charge of?

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1 A. He's in charge of the ---  
2 in this case, the Pittsburgh  
3 Division of the FBI.

4 Q. So that SAC would be your  
5 boss?

6 A. That's correct.

7 Q. And from a business  
8 standpoint, what was your  
9 relationship with Special Agent  
10 Kush?

11 A. I was his immediate  
12 supervisor.

13 Q. So it was Kush's  
14 responsibility to report matters to  
15 you?

16 A. That's correct.

17 Q. Now, to your knowledge,  
18 did anyone at the State Police do  
19 anything that truncated or shortened  
20 your investigation?

21 A. To my knowledge, no.

22 Q. To your knowledge, did  
23 anybody at the State Police do  
24 anything that hampered your  
25 investigation?

1 A. No.

2 Q. Do you feel that the FBI  
3 fully investigated, fully and  
4 completely investigated the  
5 allegations of possible selling of  
6 positions at the State Police  
7 Academy?

8 A. Yeah, I believe we --- we  
9 had an obligation to follow up on  
10 some of the information that Trooper  
11 Stanton was saying on tape, but none  
12 of that panned out.

13 Q. But, to your knowledge,  
14 that didn't pan out, the reason it  
15 didn't pan out had nothing to do  
16 with somebody at the State Police,  
17 you know, blowing the whistle on  
18 your investigation or anything like  
19 that?

20 A. Not to my knowledge.

21 Q. Why weren't any charges  
22 filed by the FBI against Trooper  
23 Stanton?

24 A. The case was presented to  
25 the United States Attorney's Office,

1 and they didn't believe that we had  
2 evidence to --- for a Federal  
3 violation. So the case was then  
4 turned over to the Attorney General.

5 Q. What Attorney General?

6 A. The State Attorney  
7 General's office.

8 Q. And have you followed up  
9 on that investigation or had any  
10 further contact with it?

11 A. You know, I've read some  
12 stuff in the paper about it. And  
13 I'm not totally up to date with what  
14 happened.

15 Q. Just have you been  
16 involved with any of the  
17 investigators or any of the  
18 attorneys that are currently  
19 handling it?

20 A. Not personally, no.

21 Q. Now, you mentioned OPR,  
22 and you said that's the Office of  
23 Professional Responsibility. And I  
24 think Mr. Bailey had talked about it  
25 as being the Bureau of Professional

1 Responsibility. Just so we're  
2 clear, you --- when you said Office  
3 of Professional --- you wanted to  
4 make sure someone in OPR knew about  
5 this, what did you mean?

6 A. We call it OPR in our  
7 organization. All law enforcement  
8 agencies have this branch that  
9 investigates internal problems,  
10 problem employees, employees that  
11 crossed over the line. Once we  
12 found out about Trooper Stanton's  
13 involvement, we felt we had an  
14 obligation to notify the State  
15 Police. And Captain Ober was the  
16 most logical person because he was  
17 at the time --- my understanding, he  
18 was running the Bureau of  
19 Professional Responsibility. And we  
20 wanted to inform somebody in the  
21 State Police of that. That was  
22 initially why we reached out to  
23 him.

24 Q. So at the time that you  
25 talked to him, you believed he was

1 the director of the Bureau of  
2 Professional Responsibility?

3 A. Not the director, but ---  
4 but certainly a person at least a  
5 management level that would take the  
6 information and be aware of what was  
7 going on with our investigation,  
8 because it did involve at least one  
9 member of their department.

10 Q. Were you familiar with the  
11 structure of the equivalent of ---  
12 the PSP's equivalent of OPR?

13 A. No.

14 Q. So you weren't aware that  
15 there --- there was an Internal  
16 Affairs Division that was just one  
17 portion of the Bureau of  
18 Professional Responsibility?

19 A. No, I just --- it was our  
20 --- our belief and my belief at the  
21 time that Captain Ober was a Captain  
22 in charge of what would be their  
23 Bureau of Professional  
24 Responsibility.

25 Q. In your Office of

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1 Professional Responsibility, are  
2 there different levels?

3 A. Everything of ours has  
4 different levels, but I --- yeah,  
5 there's a headquarters level that  
6 handles most --- almost all of that  
7 stuff. And it's filtered out  
8 through headquarters in Washington.

9 Q. You said that you were  
10 concerned that somebody at the ---  
11 in the Internal Affairs portion of  
12 Bureau of Professional  
13 Responsibility would know about  
14 this. Why were you concerned about  
15 that?

16 A. Well, two reasons. One  
17 --- I think when somebody in the  
18 State Police was contacted prior to  
19 me getting here, we wanted to make  
20 sure that they weren't running some  
21 sort of operation, a sting  
22 operation, using Trooper Stanton as  
23 an undercover agent.

24 Q. Okay.

25 A. We wanted to make sure

1 that wasn't happening. When Agent  
2 Kush contacted whoever he contacted  
3 in the State Police prior to me  
4 getting here, that was the purpose  
5 of that contact. And Agent Kush,  
6 from my understanding, was told, no,  
7 that's not happening. If Stanton's  
8 doing something, he's doing it on  
9 his own. He's not doing it at the  
10 behest of the State Police.

11 The second reason is  
12 obviously just as if a state trooper  
13 or state police person would come  
14 into information about an FBI agent  
15 out there doing something illegal,  
16 you know, we have an obligation to  
17 the law enforcement community to  
18 make their department aware of it.  
19 And we were fulfilling the  
20 obligation, at least in my mind, of  
21 notifying the State Police that we  
22 got at least this trooper and  
23 possibly other people involved in  
24 doing some illegal activity.

25 Q. By the time you arrived in

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1 Pittsburgh, had Agent Kush already  
2 been in contact with Captain Ober?

3 A. I don't believe he was in  
4 contact with Captain Ober. I  
5 believe he had contacted somebody  
6 else, who subsequently was promoted  
7 or moved on. I don't know who he  
8 called, but I do know he talked to  
9 somebody.

10 Q. Okay.

11 A. I don't think it was  
12 Captain Ober.

13 Q. During the investigation,  
14 was the --- was the Bureau --- the  
15 Major in charge of the Bureau ---  
16 excuse me, let me rephrase that.  
17 Was the Major at the State Police  
18 who was in charge of the Bureau of  
19 Professional Responsibility ever a  
20 target of your investigation?

21 A. No.

22 Q. And Major Hawthorne  
23 Conley, specifically by name, was he  
24 ever a target of your investigation?

25 A. No.

1 Q. The Lieutenant Colonel who  
2 was in charge of administration for  
3 the State Police, was he ever a  
4 target of your investigation?

5 A. No, but what I want to say  
6 is that if you take what Stanton was  
7 saying on tape, you know, he was  
8 alleging that people were moving  
9 test scores from one block to  
10 another. You know, that would imply  
11 that somebody in a position to do  
12 that was involved, although we never  
13 had names of anybody that was doing  
14 that. We never had them as a  
15 subject of a case. There was always  
16 that possibility out there that that  
17 was what was occurring, if you would  
18 take Stanton with what he was  
19 saying.

20 Q. And that's kind of where  
21 I'm going with this. I'm trying to  
22 understand. You wanted to know who  
23 could --- if this was true, who  
24 could possibly manipulate this;  
25 right?

1 A. If it was true, yes.

2 Q. Right. And what  
3 information did you receive that  
4 indicated to you that the Lieutenant  
5 Colonel in charge of administration  
6 would be able to do that kind of  
7 ---?

8 A. Well, when we first  
9 notified Captain Ober, he was  
10 talking about two or three people in  
11 a position that would be able to do  
12 that.

13 Q. Okay.

14 A. There's only two or three  
15 people in the State Police that  
16 could possibly do that. And he  
17 expressed concerns at that time that  
18 he needs to be careful about who he  
19 passes this information on to.

20 Q. Okay. That's what I was  
21 trying to understand, was how you  
22 identified who might be able to be  
23 in a position where they could  
24 manipulate the test scores, et  
25 cetera?

1 A. Right. He may have given  
2 us some names of individuals, three  
3 or four individuals that would be in  
4 that position to do it. I don't  
5 recall what the names were. We  
6 certainly didn't make these people  
7 subjects of an investigation. But  
8 Captain Ober was concerned that he  
9 needs to be very careful about who  
10 he reports this information to.  
11 Because he really did not want to  
12 compromise potentially this case  
13 going further.

14 Q. Right.

15 A. To his credit.

16 Q. I understand that. But  
17 was it --- but it was Captain Ober  
18 that was telling you that these are  
19 the people that I think would be in  
20 a position ---

21 A. Right.

22 Q. --- to do this?

23 A. Right. I mean, I would  
24 have no way of knowing who would be  
25 in a position to do that.

1 Q. Did you have any  
2 information from any other source,  
3 other than Captain Ober, that these  
4 are the people that potentially  
5 could do something like that?

6 A. No. Captain Ober was  
7 explaining to us how the system  
8 worked.

9 Q. All right. And in  
10 explaining that, was the  
11 Commissioner of the State Police one  
12 of the people that he identified as  
13 somebody that could be in a position  
14 to alter the test scores or do  
15 whatever was necessary to get  
16 someone into the Academy?

17 A. He may have been. There  
18 was certainly some high-level people  
19 that he was concerned about, yes.

20 Q. Okay. Did he ever talk to  
21 you --- did the name Lieutenant  
22 Colonel HICKES ever come up, if you  
23 remember?

24 A. I don't remember.

25 Q. I know it's a long time

1 ago.

2 A. You have to understand, I  
3 wasn't writing this stuff down. I  
4 was there with Agent Kush, and we  
5 were just exchanging information.

6 Q. And just --- you were just  
7 the supervisor of Agent Kush, who  
8 was the one doing the investigation?

9 A. That's correct.

10 Q. Okay. My question is, if  
11 you suspected that --- if you  
12 genuinely suspected that the command  
13 staff at the State Police might be  
14 involved in this kind of selling of  
15 slots into the Academy, why would  
16 you tell anybody at the State Police  
17 about it?

18 A. Well, when I look at a  
19 Captain of OPR or Bureau of  
20 Professional Responsibility, you  
21 know, I feel an obligation that we  
22 have to inform that other agency  
23 about an investigation of one of  
24 their own. As if --- as somebody I  
25 would expect would notify the FBI, I

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1 would hope, if they come across some  
2 possible criminal activity by an FBI  
3 agent. So we felt an obligation to  
4 do it, to talk to somebody. And my  
5 position on OPR or Bureau of  
6 Professional Responsibility is that  
7 they're one level above reproach.

8 Q. Well, if, for example, in  
9 your Office of Professional  
10 Responsibility, someone there got  
11 information that the director of the  
12 FBI was potentially involved in  
13 something similar, who would need to  
14 know about that?

15 A. I don't know exactly who,  
16 but it'd probably be somebody down  
17 at headquarters at a pretty high  
18 level.

19 ATTORNEY GUIDO:

20 Can you hang on one  
21 minute. Let me just  
22 confer.

23 A. Sure.

24 BY ATTORNEY GUIDO:

25 Q. I just have one other

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1 thing I would like to ask you  
2 about. Trooper Stanton was a  
3 target; correct?

4 A. Right.

5 Q. And he was stationed  
6 somewhere here out west?

7 A. I think he was in  
8 Uniontown. He might have been in  
9 Indiana. I don't remember.

10 Q. Do you have any  
11 recollection of whether Trooper  
12 Stanton's troop commander was ever  
13 suspected of being involved in any  
14 way?

15 A. Do I have any information  
16 to that?

17 Q. Yes.

18 A. No, I don't.

19 ATTORNEY GUIDO:

20 All right. That's  
21 all I have.

22 ATTORNEY BAILEY:

23 Mike, you know how  
24 these things go; don't  
25 you?

1 A. I certainly do.

2 ATTORNEY BAILEY:

3 I have just a few  
4 follow ups in connection  
5 with what she asked.

6 RE-EXAMINATION

7 BY ATTORNEY BAILEY:

8 Q. The fact is you had some  
9 hard data, which indicated that  
10 Mr. Stanton was engaged in criminal  
11 or very close to criminal activity;  
12 right?

13 A. That's correct.

14 Q. And to be very frank about  
15 it, in doing your job, you didn't  
16 know who above him at whatever level  
17 or rank if indeed anyone else was,  
18 if he wasn't just blowing off his  
19 mouth or whatever, you really didn't  
20 know who above him could be involved  
21 in it, just that there were  
22 references to indicate that someone  
23 above him in the State Police  
24 hierarchy might be involved; isn't  
25 that fair to say, Mike?

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1 A. That's fair to say, yes.

2 Q. Okay, sir. And if you  
3 begin an investigation, and there's  
4 indication because of the verbiage  
5 used by a source of information that  
6 a particular group, if it's a ---  
7 you know, somebody says, well, there  
8 are people in Pennsylvania that  
9 might be involved, I mean, you're  
10 dealing with 12 million people,  
11 that's off the wall. But if you  
12 have a group defined, like you know  
13 we read about this Texaco case and  
14 stuff and somebody says, somebody at  
15 the board level, you have at least a  
16 reasonably identifiable group;  
17 right?

18 A. Correct.

19 Q. Okay. And if you don't  
20 know who that is, you're not going  
21 to sit down there and point a finger  
22 at so and so and so and so unless  
23 you have some reason to do so; isn't  
24 that correct?

25 A. That's correct.

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1 Q. Okay. Now, do you know  
2 why --- let me do this in an offer  
3 form, so you know where I'm coming  
4 from. As a curiosity item to me,  
5 the record seems pretty clear that  
6 Mr. Kush at some point contacts  
7 western office IAD, shares some  
8 information obviously about Stanton,  
9 because one of the questions is is  
10 Stanton --- are you guys doing a  
11 sting? Perfectly legitimate,  
12 reasonable thing to do. But he  
13 doesn't go back to the western  
14 office of IAD. Do you know if  
15 Mr. Kush was referred to the head  
16 office in Harrisburg, which ended up  
17 being occupied at the time by  
18 Mr. Ober, or whether Mr. Kush did  
19 that for some reason that he --- he  
20 --- that he shared with you that  
21 you can tell us? Do you know why?

22 A. No, I don't. I mean, as I  
23 said, I don't know who Agent Kush  
24 contacted prior to my arriving  
25 here. And Captain Ober was

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1     contacted.  It's my understanding  
2     that --- because of his position.

3     Q.             Right.

4     A.             At the time.

5     Q.             Well, the name Behrens has  
6     been mentioned.  In fact, it's in  
7     some of the product of the  
8     investigation.  B-E-H-R-E-N-S.

9                     MR. OBER:

10                    Correct.

11     BY ATTORNEY BAILEY:

12     Q.             Behrens.  No reason to  
13     imply or suspect any wrongdoing on  
14     that gentleman's part.  But I  
15     believe he may have been in western  
16     IAD.  Do you have any recollection  
17     of that name?

18     A.             No, I don't.  I don't know  
19     the name.

20     Q.             Okay.  Offhand, do you  
21     have a recollection of how many  
22     colonels, light colonels, full  
23     colonels there are in the  
24     Pennsylvania State Police?

25     A.             I have no idea.

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1 Q. Okay. And obviously, you  
2 didn't have any idea then and you  
3 didn't know how many Majors there  
4 were or anything like that; right?

5 A. I don't know, no.

6 Q. And in fairness to you,  
7 you don't know even what rank a  
8 troop commander has to be or might  
9 be; is that fair to say?

10 A. I don't know the State  
11 Police's chain of command, their  
12 reporting requirements, none of that  
13 stuff.

14 Q. Yes, sir. And so what you  
15 were doing was as a matter ---  
16 because you have to work and  
17 cooperate with this agency, because  
18 typically in police organizations,  
19 you know, they put folks that are  
20 pretty much above it and apart from  
21 any kind of a problem into the BPR  
22 or RPR position, you made a judgment  
23 as a highly qualified professional  
24 --- or excuse me, Mr. Kush did, that  
25 this would be the contact point, and

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1 it didn't matter if it was Captain  
2 Ober, Santa Claus, the truth --- the  
3 tooth fairy or anybody else, it was  
4 a professional judgment based upon  
5 experience, and that's why you did  
6 it; isn't that correct?

7 A. Yeah. You would give the  
8 information to the logical person of  
9 the department that you felt would  
10 need to know.

11 Q. Okay. And I think you've  
12 indicated a number of times that  
13 Captain Ober expressed concern about  
14 the integrity and respect for your  
15 investigation. And I don't think  
16 there's any need to beat that --- to  
17 beat that up anymore. I think  
18 you've been very --- you mentioned  
19 that a number of times. Do you know  
20 how many tapes were turned over  
21 after the investigation was over to  
22 the Pennsylvania State Police?

23 A. No. Exactly, no, I don't  
24 know what number.

25 Q. Do you know what role the

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1 Attorney General played in it,  
2 whether they said they didn't want  
3 to do the investigation or give it  
4 to the State Police? Let me tell  
5 you why I asked that, so you know  
6 where I'm coming from. Our  
7 information indicates that at some  
8 point the FBI product, work product,  
9 and this odd to me because I did  
10 have some experience with the FBI in  
11 some ways, not all good, by the way,  
12 I'll be honest with you, Mike. I  
13 mean, you've got some tremendous  
14 people. I think you've got a few  
15 ringers in there, too, in all  
16 fairness. But that's my opinion.

17 Now, my understanding is  
18 there was a box of investigative  
19 work product that included a number  
20 of tapes, tape recordings. Do you  
21 know how or why they were turned  
22 over to the Pennsylvania State  
23 Police after the FBI was done?

24 The reason I ask is I  
25 understand the way the FBI handles

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1 evidence is if you have like, for  
2 example, original tapes and that  
3 sort of thing, they're documented,  
4 and they're put into a case file,  
5 agents --- even the stuff you do to  
6 put your 302s together, and all that  
7 stuff, bundled up, put together. I  
8 think it's shipped off to  
9 Philadelphia or whatever. Do you  
10 know if the original tapes in that  
11 matter were turned over to the State  
12 Police?

13 A. I don't know. I doubt if  
14 the original tapes were turned over.

15 Q. Okay.

16 A. But I know the information  
17 was provided to the Attorney  
18 General's office, because  
19 prosecution wasn't going to occur  
20 under the Federal system. So the  
21 tapes, transcripts, whatever  
22 evidence we had against Stanton and  
23 the other individual, Bridge, were  
24 turned over to an attorney for the  
25 state Attorney General's office. I

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1 don't know that any information was  
2 given to the State Police. I mean,  
3 it may have been, but I don't ---  
4 other than what we provided Captain  
5 Ober with.

6 Q. Do you know whether the  
7 matter, as far as the State is  
8 concerned, ended up with a District  
9 Attorney in Indiana County?

10 A. Yeah, I believe it did.

11 Q. Do you know the powers of  
12 the State Attorney General to  
13 prosecute?

14 A. Do I know the powers?

15 Q. Yes. Do you know what  
16 their jurisdiction might be to  
17 investigate and prosecute?

18 A. To some extent, yes.

19 Q. Do you know who that  
20 attorney with the Attorney General's  
21 office was?

22 A. It might have been a  
23 VonGeis. I'm not sure. I mean, I  
24 had --- I was responsible for 200  
25 investigations.

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1 Q. There is an Attorney  
2 VonGeis, sir.

3 A. It may have been. That  
4 name kind of sounds familiar.

5 Q. However, I'm not so sure  
6 it would have been ---?

7 A. It might have been another  
8 case. I don't know.

9 Q. Yes, I'm not so sure. Do  
10 you know whether the FBI turned over  
11 any transcripts over to the State  
12 Police?

13 A. We gave Captain Ober some  
14 transcripts and some tapes.

15 Q. Okay. Aside from Captain  
16 Ober, do you know, sir? If you  
17 remember. I know it's tough.

18 A. I don't --- personally, I  
19 don't know if anything was given to  
20 the State Police, other than what we  
21 provided to Captain Ober. It may  
22 have been. I don't know.

23 Q. Do you know a Captain  
24 Monaco? Did you ever know a Captain  
25 Monaco?

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1 A. Frank? Yeah, I know him.

2 Q. It might have been ---  
3 matter of fact, we had testimony, I  
4 guess it was maybe yesterday, day  
5 before yesterday, Lieutenant Colonel  
6 Coury testified, I believe, that he  
7 had a conversation with Mr. Monaco  
8 about Stanton or matters relating to  
9 Stanton. Do you know anything about  
10 that?

11 A. No. I know Frank Monaco  
12 from things, other than the Stanton  
13 case.

14 Q. Right.

15 A. I've never talked to him  
16 about the Kipp Stanton case.

17 Q. He's not --- again, I  
18 don't want to imply that any of  
19 these people are suspected of  
20 wrongdoing or anything like that. I  
21 know him. I have a high opinion of  
22 him. You know, that's not the  
23 issue. We're just trying to sort of  
24 trace down what happened because the  
25 Commissioner became so upset with

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1 this. And we're trying to figure  
2 out what happened, and why he got so  
3 upset. Again, I'd like to say thank  
4 you.

5 A. You're welcome.

6 ATTORNEY GUIDO:

7 I have something that  
8 I forgot to ask you. And  
9 he might --- Mr. Bailey  
10 may have follow up on this  
11 as well.

12 RE-EXAMINATION

13 BY ATTORNEY GUIDO:

14 Q. You mentioned previously  
15 when you were just talking to  
16 Mr. Bailey about a meeting in which  
17 your SAC called you in and told you  
18 that Evanko was upset. Do you  
19 remember when that was?

20 A. Well, it was when Rick  
21 Mosquera was still in Pittsburgh.  
22 And so I don't know when he left.

23 Q. Okay.

24 A. It wasn't very long  
25 afterwards that he left. When did

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1 he leave, 2000 sometime? I really  
2 don't know.

3 Q. Was there anybody else  
4 present at that meeting between you  
5 and the SAC?

6 A. Ralph Kush may have been  
7 there. I don't remember.

8 Q. Okay.

9 A. I've had so many, many  
10 meetings with the SACs about so many  
11 things, it's hard to remember who's  
12 in the room.

13 Q. In the meeting, you were  
14 told that Commissioner Evanko was  
15 upset about it, but was there any  
16 --- what I'm wondering is was there  
17 any adverse outcome about that, the  
18 fact that the Commissioner was  
19 upset? Did anything happen with the  
20 FBI or ---?

21 A. No. Other than the  
22 article in the Harrisburg newspaper  
23 calling for my head and Ralph Kush's  
24 head, I don't think there was any  
25 adverse ---.

1 Q. Which article was that?

2 A. Somebody showed me an  
3 article once where the Commissioner  
4 had said something about he wasn't  
5 happy with us.

6 Q. Do you know if the article  
7 you're referring about was the  
8 article that was about Plaintiff's  
9 suit, in which the Plaintiff claimed  
10 that he knew that that's how the  
11 Commissioner felt?

12 A. I don't remember. I know  
13 that I saw it. I was with somebody  
14 from Harrisburg or Philadelphia, and  
15 they pointed this article out to  
16 me.

17 Q. Was it in the Harrisburg  
18 papers?

19 A. It could have been a  
20 Philadelphia paper, or a Harrisburg  
21 paper. But I'm still here and Kush  
22 is still here, so I guess there were  
23 no ---.

24 Q. But what I'm saying is so  
25 nothing ---?

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1 A. No.

2 Q. Even if the Commissioner  
3 was upset, nothing happened to you?

4 A. No.

5 ATTORNEY GUIDO:

6 Okay. Thank you.

7 That's it.

8 RE-EXAMINATION

9 BY ATTORNEY BAILEY:

10 Q. Well, do you know if the  
11 Commissioner ever called Louis  
12 Freeh?

13 A. I don't know.

14 Q. And by ---?

15 A. Louis Freeh never called  
16 me.

17 Q. Whatever. You know, for  
18 what it may be worth and you ---  
19 just if you recollect this. If not,  
20 maybe you don't. Do you have a  
21 recollection years ago there was a  
22 situation where I think someone had  
23 raised questions about what was  
24 going on in the FBI front office.  
25 And if my recollection serves me

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1 correctly, there was some  
2 investigative work done to the  
3 credit of the Bureau, and the agents  
4 and people involved, and worked on  
5 that investigation in spite of the  
6 director's position. And this might  
7 be 10, 15, 20 years ago, I'm not  
8 sure. But to me, that speaks to a  
9 very important professional issue.  
10 And that is if you're an  
11 investigator and you do an  
12 investigation, you have a duty and  
13 responsibility professionally to  
14 take the leads as they come and  
15 follow them where they go. And that  
16 is your duty, and that's a duty you  
17 owe to the law and your oath of  
18 office; isn't that correct?

19 A. That's correct.

20 ATTORNEY BAILEY:

21 Thank you, sir.

22 That's it.

23 ATTORNEY GUIDO:

24 That's it.

25 VIDEOGRAPHER:

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Is it concluded?

ATTORNEY GUIDO:

Yes.

VIDEOGRAPHER:

Okay. It's 11:05

a.m., March 14th, 2002.

The deposition is now

concluded.

A. Thanks.

\* \* \* \* \*

VIDEOTAPED DEPOSITION CONCLUDED AT

11:05 A.M.

\* \* \* \* \*

1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF CAMBRIA )

3 C E R T I F I C A T E

4 I, Denise J. Khorey-Harriman, RMR, a Notary  
5 Public in and for the Commonwealth of Pennsylvania,  
6 do hereby certify:

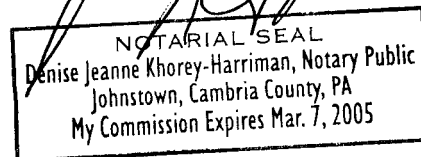
7 That the witness was first duly sworn to testify  
8 to the truth, the whole truth, and nothing but the  
9 truth; that the foregoing deposition was taken at the  
10 time and place stated herein; and that the said  
11 deposition was taken stenographically by me and  
12 reduced to typewriting, and constitutes a true and  
13 correct record of the testimony given by the witness.

14 I further certify that the reading and signing  
15 of said depositions were (not) waived by counsel for  
16 the respective parties and by the witness.

17 I further certify that I am not a relative,  
18 employee or attorney of any of the parties, nor a  
19 relative or employee of counsel, and that I am in no  
20 way interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand  
22 and stamp this 26th day of March 2002.

23 *Denise Jeanne Khorey-Harriman*  
24  
25



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